1: Evans-Pritchard E-5 (1931, 1936) 1940
FJ22 Nuer FJ22

When a Nuer speaks of a person having stolen (*kwal*) an animal, he means that he has taken it without permission and by stealth and by no means implies that he ought not to have taken it. Within a tribe an abductor of cattle always considers that he is taking what is owing to him. It is a debt (*ngwal*) which he is settling in this way, because the man who owes him cattle has not repaid them of his own accord. The legal issue, therefore, is whether he is right in assuming a debt and whether he should have taken the particular animals he took. So well is this practice of helping yourself to what is owing to you an established habit, that it may be said to be a customary way of settling debts. Thus the final cattle of a homicide-payment are often seized in the pastures, and it often happens that when a bridegroom and his kin do not hand over all the cattle they have promised, the wife's brothers try to seize the animals still owing to them. In other circumstances a man will steal a cow which he is owed, sometimes employing the services of a magician to charm the owner so that he may not guard his herd on the day the theft is planned; for example a man who lent another an ox for sacrifice in sickness, at his daughter's wedding, in time of famine, and so on, and has not received a heifer in return, although the debtor possesses one. Having seized a cow from the debtor's herd he is quite willing to return it if he receives instead the heifer owing to him. The debtor will then either try to steal his cow back again or he will open a discussion which will result in his paying a heifer and receiving back his cow.

The only quarrels within a village or camp about ownership of cattle that I have witnessed have concerned obligations of kinship or affinity and have eventually been settled by one party giving way on account of his relationship to the other. If a man seizes cattle from a kinsman or neighbour he walks into his kraal and takes them. If the owner has a strong case he may resist: otherwise he lets the cattle go, for he knows that the man will be supported by public opinion in the community. If a man seizes cattle from a man of a different village he adopts different tactics. With one or two friends he watches the cattle in their grazing-ground till a suitable opportunity occurs. I have never heard of a Nuer stealing a cow from a fellow tribesman merely because he wanted one. He has, on the other hand, no hesitation in stealing cows from persons belonging to neighbouring tribes and will even go with friends to another tribe in order to steal from them. This theft (*kwal*) is not considered in any way wrong.

If a man commits adultery he pays an indemnity of five cows and an ox, unless the man is impotent, when the adulterer can

1: Evans-Pritchard E-5 (1931, 1936) 1940
FJ22 Nuer FJ22

684 claim a cow on the marriage of a female child of his adultery. Even when the husband is not impotent, if the adulterer can show that there is fruit of his adultery he can claim back the cattle he has paid as an indemnity, except for a cow known as *yang hule*, the cow of the sleeping-skin, which has ritual significance. But adultery within a small local community is probably rare because the people are all related to one another, and therefore a man considers that not only would it be wrong to commit adultery with their wives but also that it would be, in a greater or lesser degree, incestuous. If the two men are close kinsmen the adulterer provides an ox for sacrifice but is unlikely to pay an indemnity. If they are not close kinsmen the husband may try to seize the adulterer's cattle, but he only takes this step if he actually catches the offender committing adultery. The adulterer, to avoid a fight, runs away, and if he fears that his cattle may be seized he places them in the kraals of friends and kinsmen. This makes it difficult for the husband to seize them, for even if he knows where they are he does not want to involve himself in quarrels with a number of his neighbours by raiding their kraals. Nuer do not consider it immoral to commit adultery with the wives of persons living in other villages. If the husband discovers the offence he may try to seize the offender's cattle, but in doing so he runs the risk of resistance and some one may get killed and a feud result. A herd is the joint property of brothers, even though it is divided among them, and they do not readily acquiesce in the loss of cattle on account of adultery. In my experience it is very seldom indeed that a man obtains compensation for adultery. Adultery with the wife of a man of another tribe is a matter of no importance. What can he do anyhow?

684 836 Likewise fornication with an unmarried girl is compensated by payment of a heifer and a steer. But it is most unlikely that the payment will be made. If the girl's kinsmen know that she is having relations with a man who possesses cattle and is likely to marry her they turn a blind eye to the affair. If he has no cattle, or if the girl is already engaged, and one of her brothers catches him in congress with her he fights him, unless, as usually happens, the man runs away, for it is not considered cowardly to run away in these circumstances. The girl's kinsmen may then come to his kraal and, if he possesses them, take a male calf and a female calf, and if they are strong enough they may not be resisted. This is what Nuer tell one, but I have never known any one pay a male and a female calf, although after every dance I have seen the youths and maidens have paired off and there has been much promiscuous intercourse and very little effort to conceal it. It frequently

1: Evans-Pritchard E-5 (1931, 1936) 1940
FJ22 Nuer FJ22

684 836 happens that a man impregnates an unmarried girl and he is then expected to marry her. The girl's kinsmen may raid his kraal and seize some of his cattle, but he will try to circumvent this by hiding his beasts in the kraals of relatives and neighbours. If later he marries the girl the cattle her kinsmen have seized count as part of the bride-wealth, and if he refuses to marry her they count as payment for possession of the child, so that in either case he pays no indemnity but only a fee to establish his rights. Here again, in point of fact, it is very difficult for the girl's brothers to seize the man's cattle, unless he is willing to let them do so, and there is always the risk of a fight which may become general. [835] One does not fornicate with the girls of one's own village, for they are generally related to one, so that when an issue of the kind arises it is generally between persons of different villages of the same district. If the young man can avoid being hit over the head with a club at the time of the incident and keeps clear of the girl's village for a few months he is not likely to pay an indemnity or to suffer any other consequences. If he has put the girl in child he will, in normal circumstances, send a kinsman to say that he intends to marry her. The girl is then regarded as engaged and the young man becomes son-in-law to her parents and one does not injure one's son-in-law. Even if he refuses to marry their sister, the brothers hesitate to attack the father of her child.

683 It is possible to obtain from Nuer a list of compensations for injuries to the person: e.g. ten cattle for a broken leg or skull, ten cattle for the loss of an eye, two cattle for a girl's broken teeth, &c. For a flesh wound, however serious, there is no compensation unless the man dies. In different parts of Nuerland the number of cattle to be paid in compensation varies. I have not recorded any instance of a man receiving such compensation, except from a Government court, but Nuer say that he would receive it if his kinsmen were strong enough to retaliate.

754 627 It is alleged that, in the old days, if a man died of magic his kinsmen would try to slay the magician (*gaan wal*), though I have not recorded a case of a magician having been killed. Nuer point out that a magician does not use his magic against persons in his own community but only against persons of other villages, so that it is not easy to revenge yourself on him since he will be supported by his village who regard powerful magic as of value to their community. It is also said that in the old days a witch (*peth*) was sometimes slain, though I cannot say how often, if at all, this occurred.

583 627 Many disputes arise about bride-wealth: the husband's people do not pay what they have promised or there is a divorce and the

2:Evans-Pritchard E-5 (1931, 1936) 1951
FJ22 Nuer FJ22

582 rules forbidding marriage within certain groups and between certain categories of persons are not coterminous with those forbidding sexual congress, the two cannot be divorced. The reason given by Nuer for their marriage prohibitions is that were marriage to take place within certain degrees of relationship it would be *rual*, incest.

835 The word *rual* means both incest and the misfortune which it
●684 causes. Syphilis and certain forms of yaws are believed to be espe-
753 cially a consequence of incest, though retribution may come in any form, from wild beasts, a spear, drowning, sickness, &c. These misfortunes can sometimes be avoided by sacrifice. On the other hand, they may fall not only on the partners to the sin but also on their closest relatives, so that a man who commits incest may render himself responsible for homicide as well.

582 When it is forbidden for a man to have relations with a woman he may not, of course, marry her, and it will be simpler to begin this account by stating the Nuer table of marriage prohibitions. Marriage is not permitted between clansfolk, close cognates, close natural kinsfolk, close kinsfolk by adoption, close affines, and persons who stand to one another as fathers and daughters in the age-set system.

A man may not marry a clanswoman and *a fortiori* a woman of his lineage. Agnatic kinship is recognized between some clans, but it does not constitute a bar to intermarriage. The relationship is considered to be very distant and, in any case, the ancestor of the fraternal clans is believed to have cut an ox in twain to permit intermarriage between the descendants of his sons. Nuer accept the hypothesis that maximal lineages of the larger clans might one day split apart and marriage be allowed between them, but 'at present they are too close'. They say '*cike diel*', 'they have not yet reached ten generations (from their founder)'. They perceive that the limits of clan exogamy have been fixed arbitrarily and are not unalterable.

582 Clan exogamy is stated by Nuer in terms of clan symbols. Each
614 clan has one or more spear-names, with which go certain honorific titles, and the spear-names of the bride's clan and the bridegroom's clan are formally shouted out at weddings. They must not be exactly the same, for this would mean that the marriage was a breach of the rule of clan exogamy. When a marriage is proposed between a youth and maid whose families are strangers the first

2:Evans-Pritchard E-5 (1931, 1936) 1951
FJ22 Nuer FJ22

588 legal family in opposition to this natural family and the genitor
594 can become pater to the children. If the woman leaves him, his position is then equivalent to that of a man who has divorced his wife, but has left part of the bridewealth with her family to retain his children.

842 It is clear from the facts I have recorded that Nuer do not attach great importance to physiological paternity. Men prefer to beget their own sons, but it is not ignominious to nurture children begotten by others. Nuer pay little regard to the manner of begetting so long as the legal fatherhood of the child is well established. This is particularly evident in their ideas about adultery, and a consideration of them will serve also to emphasize that Nuer acknowledge social and mystical links between a child and his natural father.

837 It is adultery if a man has relations with another man's wife, including ghost-wives and leviratic wives. I was struck among the Nuer both by the frequency of adultery and the infrequency of quarrels or even talk about it. Nuer seem to treat the matter lightheartedly, and not to be at all ashamed of their adulteries. In speaking of adultery, it is the risk of being speared or clubbed if caught in the act, or having to pay compensation to the husband if he finds out what is happening, that they bring to the fore. Adultery in their eyes is an illegal but not an immoral act.

•684 The legal position is as follows. When a husband has proof of his wife's infidelity he may claim compensation of six cows and, as the adulterer's kin are unlikely to support him, the husband will probably, if the two men live in the same district, receive the cattle. Nuer regard adultery in the husband's home as a more serious offence than adultery in the bush because they believe that it is more likely to cause the husband sickness. Adultery is a double damage: it is an infringement of rights and it can injure the husband's health.

If after the six head of cattle have been paid a healthy child is born of the adulterous congress, five of them must be returned, because 'the cattle and the child must not meet in one place'. Otherwise, the cattle paid in compensation partake of the nature of a legitimatization fee and hence give the genitor a claim on the child. The birth of a child seems to be thought to change the compensation for an adultery (*ruok*) into a fee for legitimatizing a child (also *ruok*). I only discovered this convention after I had left

2:Evans-Pritchard E-5 (1931,1936) 1951
FJ22 Nuer FJ22

eastern Nuerland for good and was completing my study of the Nuer in western Nuerland, but Mr. Howell assures me that it is common to all the tribes to the east of the Nile except the Jikany. Among the western Nuer it is believed that if the cattle are not returned the child may die and his ghost haunt his pater. The sixth cow, the one that remains with the husband, is called *yang kula*, the cow of the hide. The payment protects the husband from the sickness he might otherwise suffer were he to have relations with his wife after the adulterer has had relations with her—on the same sleeping-hide, as the Nuer put it. Among the western Nuer an adulterer may even receive 'the cow of the begetting' on the marriage of a daughter born of his adultery. I was told that her kin do not relish paying it, but may do so because it is feared that otherwise he may curse her and cause her to be barren or her children to die in infancy. In no circumstances can an adulterer claim the child of his adultery. Likewise a youth who impregnates an unmarried girl cannot claim the child of his fornication.

It will have been noted that the test of the nature of a procreative union is in the division of the bridewealth of a daughter born of it among those who count in one or other way as members of her family, and I conclude this section by a summary of the rules which regulate its distribution. When the pater is alive he receives 'the cattle of the father' and 'the cattle of the mother'. If he is dead they go to his sons, the bride's full and half-brothers. In ghost-marriage and leviratic marriage these rights are vested in the bride's brothers. The genitor as such has no legal claim to these cattle, but, since in a ghost-marriage he stands in the place of the pater with regard to the bride's brothers as well as to the bride herself, the cattle in any case join his herd and he will dispose of them in the interests of his sons, the bride's brothers. When the genitor has begotten the bride in leviratic marriage, division of the cattle may be more complicated because the bride may have grown-up brothers begotten by her dead pater. When the bride has been born in widow-concubinage the cattle which are the right of the parents go to her brothers, those due to the father going particularly to any sons begotten by her pater.

The genitor in ghost-marriage and in leviratic marriage may always ask for a cow for having begotten the bride in addition to any cattle due to a kinsman standing in his relationship to her. 'The cow of the begetting' or 'the cow of the loins', as it is also

584 people consent to hold the next ceremony they express by so doing their confidence in the final outcome. Marriage is not a single act. It is a succession of interconnected acts leading from courtship to the birth of children, and bridewealth is not a single payment but a succession of payments in response to the changing status of the wife and the increasing maturity of the union. As the Nuer see it, these payments continue long after the marriage is fully established and there is no question of repayment, whatever may happen, in the birth of calves and the progeny of these calves and of their progeny, a constant redocumentation which is balanced by the birth of children to the wife and of children to these children.

582 Bridewealth has so far been viewed as a social mechanism for organizing personal relations between the husband and his people on one side and the wife and her people on the other side. Some such organization is necessary because, given the Nuer rules of exogamy, there are no already existing patterns of behaviour within which the marriage can be effected. The rules of exogamy are themselves a function of the lineage structure of the Nuer and bridewealth has therefore also a structural role.

593 When a woman is married among the Nuer
684 she is transferred from one lineage to another. The husband alone has sex rights in her, but all his brothers and paternal cousins have residual sex rights and actual or potential domestic rights in her, and her children are born to his lineage. The husband's sex rights are evident in his right to claim damages for adultery. The proof of marriage, should proof be needed, in an adultery charge, and what therefore distinguishes a wife from a concubine, is that the woman "has cattle on her back". This does not mean that it is
593 payment of cattle alone which brings about the union. It is the rites of marriage which do that, for a man has no claim to compensation for adultery until the rites have reached a certain stage, even though he has paid cattle before that stage is reached. But the cattle are the certificate of marriage. The rights of the husband and any of his kin living with him to the domestic services of his wife are evident in the performing of them

[p. 1866]

7: Evans-Pritchard E-5 (1931-1936) 1949 FJ22 Nuer FJ22

formed at once. Nuer say that a sacrifice is unlikely to be efficacious when death is near and that it is little profit to make confession then.

The moral element in the retributive action which follows on a breach of the incest taboo is brought out by the fact that, except in cases of really bad incest, such as when a father and son have relations with the same woman, it is felt that no ill effects will follow an infraction if the incestuous pair were unaware that they were breaking it. It is common knowledge that children begin sexual play with kin and they are corrected if observed, but it is not thought that misfortune will follow, 'Because the children are ignorant of having done wrong'. I was told also that if two kinsmen have relations with the same girl unwittingly 'It is not *ruai* because each was unaware that the other was making love to her', and again, that if a man has relations with a distant kinswoman, being ignorant of the kinship, 'This is not *ruai* because he was unaware of the relationship between them.' Even in his own district a youth may not know the full range of his kinship, and if his father hears that he has taken a sweetheart who is distantly related to him he will tell him to break off the affair. Nuer were greatly amused when I asked them about incestuous relations among cattle and told me, perhaps not very seriously, that a cattle peg had in ancient days been cut in twain (*buk*) to make them innocuous.

If ignorance is regarded as an extenuating circumstance, the presence of children increases the danger. It is not thought that relations with a distant patrilineal cousin or with the wife of a father's brother in the classificatory sense will harm those who engage in them, but if the woman has children Nuer say: 'It (the *ruai*) may leave you alone, but it will kill the children.' In the same way I was told in reference to the case, already cited, of Lum, who was having relations with his wife and his wife's paternal cousin at the same time: 'But she [the wife] has no child, so it is not *ruai*.' If she had had a child the paternal cousin would have been the child's mother. In another case a man called Buk was having relations with a concubine in a neighbouring hamlet although his son, Bul, was married to the daughter of this concubine by another man. It was stressed by informants that Buk had not begotten a child by the concubine, for had he done so the child would have been *gat gwan*, father's son, to Bul, whose marriage, which had in any case not escaped

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

671 626 684

The significance of the 'structural relativity' of Nuer society is therefore most important in a study of customary law, for although the rules and principles which govern the conduct of all Nuer are essentially the same, the extent of their application is relative and largely dependent on the social context. This is best illustrated by use of an example. It is a legal wrong to commit adultery with another man's wife. It is a wrong which, if social relations are to continue between the two parties and the possibility of retaliation on the part of the wronged husband is to be removed, will require the payment of cattle as an indemnity. In the first place, the likelihood of the wrongdoer paying the cattle at all is determined by the relationship of the parties, both in terms of actual kinship and in terms of territorial proximity, in residence and all the sanctions which go with common residence. It will not be paid if there is no pressure on the part of the community in which they live, and there will be pressure in proportion to the extent to which the men's mutual animosity disturbs the tranquillity of that community; generally speaking, the greater the structural distance between them, the less the likelihood of composition. But in another aspect of the law concerning adultery the reverse is found. If we analyse the concepts behind the payment of the indemnity, we find that, of the six cattle required, one has purely ritual significance. It is a cow called *yang kuic* ('the cow of the sleeping mat'), the payment of which is demanded as expiation for the spiritual pollution which is caused by adultery, rather than as an indemnity required to appease the indignation of the husband. In disputes over acts of adultery which arise between men who are close kinsmen it is rare that anything more than this one cow will be demanded, for not only is the moral indignation much less, but the group of which they are part is sufficiently well-knit to resist the disturbance caused within it. Not only is the wrong a lesser one because the wronged person has other associations with the wrongdoer which mitigate the offence,[1] but social equilibrium has not been disturbed to a degree which other sanctions making for good relations cannot rectify. Thus we see that the closer the structural relationship of the parties involved, the more likely is the wrong to be rectified, but the smaller is the indemnification required to do so. Conversely, the more remote the relationship the greater the indemnification necessary but the smaller the likelihood that the wrong will be rectified at all. This is a principle which applies to all wrongs which require

671 626

[1] There is another method of analysis which expresses the same idea. It is that in the payment of indemnification in cattle between two persons closely related the limitation of rights in cattle must be considered. An individual has rights in cattle limited by mutual obligations which apply to him as member of a kinship group. If the wrongdoer is a kinsman of the wronged he has limited rights in the cattle of the wronged, and the closer the relationship, the greater the rights. Hence the recipient of the cattle is also a person upon whom may lie the obligation to assist in the payment. This principle is more clearly illustrated in payment of compensation for homicide, and will be discussed more fully later.

8;Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Thung gwacha

682 Compensation for accidental killing is usually paid on a reduced scale. Theoretically this should not be so, for, in the general balance of opposed groups, a life is a life, whatever the circumstances of death. Yet it is natural that when the act is unintentional, the feelings of those who would normally demand redress will not be so intensely inflamed, and they will be prepared to accept less. Here again the relationship of the parties is relevant, and the Nuer make a clear distinction in the terminology of their law. They speak of *gwac mara*, the accidental killing of a kinsman, as a minor wrong which will demand only tokens and ritual expiation. *Gwac gwoka*, the accidental killing of a person who is not related to the killer, is different, and an indemnity in cattle will be demanded, though usually on a much reduced scale. The dividing line between *gwac mara* and *gwac gwoka* is obviously difficult to determine, especially as the fiction of kinship is carried right through the tribal structure as an integrating principle and an explanation of political association. Nowadays the distinction is not valid, though it is doubtful whether compensation would be demanded for the accidental death of a brother or even a father's brother's son, but it is recognized that the full indemnity for homicide need not be paid. Usually half the standard indemnity is considered correct, but circumstances are important, and a Nuer court, though its members would be quite unable to express this as a general principle of law, takes into consideration what we should call negligence and the degree of criminal responsibility. There are certain extreme cases where the principal is held to be liable in theory, even though no compensation is necessary. For example, if a man who is thatching another's house falls and is killed or seriously injured, the owner must pay *thung diit*,[1] a purely symbolic payment in bundles of grass and ropes accompanied by appropriate ritual.

Thung yiika

682 According to Nuer Law, if a man seduces an unmarried girl and as
684 a result she dies in childbirth, he is held responsible for her death. Her relatives will demand compensation known as *thung yiika*. This concept follows the general principle governing homicide, that the kinsmen, or in the case of a married woman, her husband, are entitled to compensation for the wrong. They should already have demanded compensation for seduction or adultery, which is known as *ruok*,[2] and for this reason it seems probable that the act is considered to be homicide, and not merely a breach of behaviour regarding women. The use of the word *thung* rather than *ruok* indicates that this is so. *Thung yiika* is, however, described in more detail under the heading of violation

[1] *Diit*, here meaning 'thatcher'. [2] See under Adultery, pp. 153 et seq.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

of rights in women, a subject which is discussed in a later chapter.[1] *Thung yiiha* has now been abolished officially and is not recognized by the courts, but even before that, in most parts of Nuerland, as a custom it seems to have been dying out (except perhaps in Western Nuer) and it is probable that it was rarely paid.

Biem

The distinction between killing a person in fair fight and killing a person by stealth or ambush has already been mentioned, and we noted that the latter arouses in the Nuer a reaction of moral indignation, not because a life has been taken, but because it is an offence against Nuer standards of chivalry. It is therefore somewhat surprising that a higher rate of compensation is not required to appease the more intense feelings of outrage displayed by the dead man's kin. The reaction of horror or displeasure against an act of what we should call 'cold-blooded murder' is almost universal, and one might expect that the sentiment would be expressed in the scales of compensation traditional in Nuerland. There is, however, no suggestion of this in Nuer law, though a feud arising from such circumstances might well be harder to settle than one arising from straightforward homicide in battle or single combat. I think that the explanation lies in the fact that the circumstances rarely, if ever, arise except in the form of an ambush against a particular individual in pursuance of a feud.[2] If carried out as an act of vengeance the circumstances are considered to be mitigated. The literal meaning of the word *biem* is, in fact, 'to kill by ambush'.

4. THE STATUS OF PERSONS IN CONNEXION WITH HOMICIDE

Persons for whom Compensation was paid at Reduced Rates

In the past there was also a recognized distinction in the rates of compensation for the taking of human life according to the status of the person killed. There were certain categories of persons for whom compensation was paid on a much lower scale.

[1] See Chapter IV, p. 155.

[2] 'Fair fight' is a Nuer maxim. In the years 1943–4 there was a sudden and unusual incidence of cold-blooded murder among the Lak Nuer. In nearly all cases there was no actual motive, and the offenders gave as an explanation that they were directed by certain spirits (*kuth*) in their actions. Nearly all the accused, both in preliminary police investigations, enquiries, and during trial, displayed characteristics of mental instability, but not sufficient to disable them from conducting their defence. In most cases they revealed a curious persecution mania focussed on the person of their victim, though evidence that no persecution existed in fact was overwhelming. It is interesting to note that these murders, with one exception, were restricted to the Kwachor primary segment of the Lak Nuer, and all took place within a comparatively short space of time. Public opinion in Lak country was genuinely shocked and other tribes expressed strong disapproval. The Lak had an unsavoury reputation for some time to come.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

'Widow-Concubines'

The main points are as follows:

(i) The man who performs the duties of husband to the widow is in no sense the legal father of her children, nor is he heir to the legal husband.

(ii) He cannot compel her to live with him or claim compensation if she commits adultery. The compensation for adultery would concern her late husband as represented by his living brothers or legal heirs.

(iii) He cannot divorce her or demand back her bridewealth for there is no legal marriage between him and the widow, only between the widow and her late husband.

(iv) He is not even the legal representative of the dead man and therefore, unlike the levirate or 'ghost-marriage', the characteristics of the simple legal family are not contained in the structure of this union.

The man's position is therefore, in theory, a precarious one. In fact, most of these unions are arranged with the agreement of the dead man's legal representatives and thereby receive social recognition not only from the world at large, but also from the dead man's family.[1] If no such agreement exists the control over the children and the widow may be a source of legal dispute. Such disputes are not uncommon.

Unmarried Concubines

All these forms of domestic and procreative union have one principal common factor: the children of the woman, whether she be wife, 'ghost-wife', widow or widow-concubine, belong to the man on whose behalf the bridewealth cattle were transferred to her family, and they trace their descent through his name to his more remote ancestors. There are, however, forms of union which are in no sense legal because no cattle have been paid as bridewealth for the woman. Children born of such unions will be attached in name to their mother's lineage unless their father chooses to legalize their status and attach them to his lineage by payment of a special fee, or unless the mother is legally married later to some other man who assumes the status of legal father to the children.

The status of women among Nilotic peoples is high. In the question of marriage they usually have a fairly free choice, though there are undoubtedly many occasions when father or brothers will use persistent persuasion or even force to compel a girl to marry a man she

[1] A widow living in this form of union with a man is known as *ciek me lak* and her children as *goat cans*.

8;Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

562 584 dislikes simply because they are avaricious for the many cattle he possesses or wish to link themselves to some important family. More often control is exercised in the form of a prohibition rather than positive compulsion. In other words, although they will not use force to compel her to marry a man she detests, they will not allow her to marry the man she loves if he has not sufficient cattle to provide the bridewealth. Whether or not they will take this attitude depends on a variety of circumstances. Some Nuer girls are headstrong and of independent spirit and will not allow their wills to be thwarted by the conventions of the bridewealth system. They therefore live as they please with lovers of their own choice and without either the sanction of bridewealth or the ritual processes of marriage which go with it.[1] A woman of this sort is known in Nuer as *ciek me keagh*. The circumstances in which a woman becomes a *ciek me keagh* are many. Any woman who lives with a man without payment of bridewealth (either on his own behalf or on behalf of the man who is considered her legal husband) is called *keagh*, but she may not be of the restless independent spirit which characterizes most of these women. She may be a young girl who has borne a child to a man who refuses to marry her, though this is rare, or a woman who simply cannot stand life with the husband of her family's choice and has therefore run away and provoked a divorce.

836 588

Women who are *keagh* are not regarded as immoral in our sense of the word in these circumstances, but their families are naturally often exasperated by their behaviour and disappointed that no bridewealth cattle have been paid for them. Their social position as unmarried concubines is not generally so high as that of married women, but no distinction is made in the every-day behaviour of their neighbours towards them. The basic difference between widow-concubines and unmarried concubines is that in the former case bridewealth has been paid, even though it has not been paid by the man with whom they live and by whom they produce children. In the latter case bridewealth has not been paid at all or has been returned in divorce.

3. NOTE ON THE RULES OF EXOGAMY AND INCEST

582 684 835 An account of Nuer marriage laws would not be complete without mention of the laws of exogamy. It must be stated at once, however, that breaches of the rules of exogamy and incestuous extra-marital intercourse are not generally the subject of dispute or of litigation in the courts. Both parties are equally guilty, there is no question of compensation, and the spiritual contamination which is considered to follow incest (*rual*) and which is manifested in physical disorders

[1] For this reason Nuer do not go to extreme lengths of compulsion for, if the girl runs away, they will lose the chance of getting any cattle at all.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

(*nuer*), sometimes resulting in death, falls equally on both parties and even upon their relatives. There are therefore strong social and ritual sanctions. For the purposes of this Manual I shall do no more than summarize the laws of exogamy, and refer the reader to published literature on the subject.

Nuer clans and lineages are exogamous. The patrilineal descendants of a common ancestor may not intermarry. The laws of exogamy extend farther than this and include persons who are closely related by marriage; persons related by blood but not legal kinship; and, finally, persons standing in a particular social relationship to each other. The prohibited degrees of relationship and other circumstances may be summarized as follows:

(i) A man may not marry or have sexual intercourse with a clanswoman, and therefore with a woman of his lineage. The limits of clan exogamy are not, however, so rigid as to be unalterable. If the ancestral link is remote (beyond ten generations or so) the prohibition may be ignored or effectively removed by appropriate sacrifice and prescribed ritual.

(ii) A man may not marry or have sexual intercourse with a woman who is a clanswoman of his mother. This prohibition is not, however, carried back beyond six or seven generations.

(iii) As we have seen, a Nuer may be the legal son of one man and the physiological son of another. The prohibited degrees recorded above would apply to the Nuer through his legal father, but the relationship of the *genitor* to his natural child has a degree of social recognition, and it is also not permissible to marry a close kinswoman of the *genitor*. The extent of this prohibition is not as wide as that created by legal kinship.

(iv) Adoption, especially of Dinka children, is a common occurrence[1] among the Nuer, and the links created between father and adopted child receive social recognition and ultimately legal recognition amounting to true kinship.[2] A man would not be allowed to marry or have sexual intercourse with a kinswoman of his adopted father, though in the initial stages this prohibition would be less extensive. In the next generation it would probably be identical, for a man who is fully adopted into a Nuer lineage assumes all the characteristics of that lineage, and in the future his origin may be forgotten. Similarly, an adopted girl would not marry into the lineage of her adoption, and would be bound by the same prohibitions. The reason here is clearer. Members of the lineage of her adoption would be the recipients of her bridewealth cattle and could not also be her relatives-in-law.

[1] Obviously more common in the past.

[2] See also under Homicide, Chapter II, p. 56. The distinction between *jaang dhor* and *jaang cieng* is relevant.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

rights of the husband in his wife. It would be relevant, for example, if a woman committed a wrong. If she killed someone, the payment of compensation would be a liability on her husband if she was legally his wife, but if there was insufficient legal determination in the union, the responsibility would rest with her own kinsmen. Similarly if a man lies with a woman who is not his wife, he may be charged with adultery (*dhu ciek*) and compensation will be claimed, but he might with justification plead that she is not a married woman in the legal sense, and therefore the act is not adultery. In the event of his proving that the union is not a legal one, he has no liability to the husband, but this will not entirely absolve him from responsibility, for in certain circumstances her kinsmen may claim damages on the grounds of seduction of an unmarried girl. There are, of course, many circumstances which will be considered by the court, circumstances which are discussed later under the heading of wrongs in relation to women. In such cases the legality or otherwise of the marriage is in issue, and it is sometimes difficult to find out what constitutes legality. In most tribes it seems that the ceremony which is considered to legalize the union is the *muot*, but this, as will be seen later, is not a universal law among the Nuer.

5. THE DISTRIBUTION OF BRIDEWEALTH

When a man wishes to get married his relatives will usually assist him to collect the necessary cattle in addition to those already allotted to him in his father's herd. There are no set rules governing the actual assembly of bridewealth cattle, and in any case the circumstances are too varied to warrant generalization on the subject. Brothers should marry in strict order of age, and the majority of the cattle they use for the purpose will be drawn from their father's herd. The legal father of a family is responsible for the distribution among his sons of those cattle which have come to him as his rights in the bridewealth cattle of his sisters, daughters, and other female relatives. If he is dead, his legal representative will be his brother, usually the senior paternal uncle of his sons, or his eldest son. The assembly of marriage cattle is, however, partly dependent on the rules of distribution applied to previous marriages in the bridegroom's family. In the application of these rules we shall see that there is a tendency to alternate because no family is exactly symmetrical. There is usually more than one claimant to one particular portion and none to another. In the first instance the junior claimant will have to await his turn until the next marriage in the family; in the second, the portion will be inherited by the claimant's heirs. In some cases these will be his own sons, in others, his brother's sons. There are conventions which govern the inheritance of rights in such cattle. The portion allotted to the mother

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

583 These fees, which are sometimes taken from the father's (*pater's*) portion of the bridewealth and sometimes demanded from the girl's husband as an extra payment, may even be claimed by an adulterer on the marriage of his natural daughter, for the Nuer recognize physiological ties even if they run counter to legal relationships. There is something of a mystical bond between father and child whatever the circumstances of birth, and Nuer believe that the natural father has power to curse his daughter with perpetual barrenness if his claims are thwarted. For this reason both the girl's kinsmen and those of her husband are usually anxious to placate him. In adultery, when a child is [684] born of the act, the indemnity (*ruok ruet ciek*) is reduced from six head of cattle to one cow. This is the *yang kule*, the 'cow of the sleeping mat', which has a ritual and expiatory purpose only. The principle of reciprocity and of legal claims raised by the transfer of cattle is so strong that even cattle paid specifically as indemnification sometimes lead to a confusion of legal rights in the future. We shall consider this matter more fully later, but it may be noted here that such claims are something quite separate from the *yang leta* which refers precisely to physiological parenthood and *yang pithe* which refers to the fostering of children and the expense of their upbringing. When a child is born to an unmarried, and usually young, girl her seducer would rarely dare to claim such fees. Had no child been born, he might be expected to pay an indemnity of two head of cattle (*ruok dhu nyal*), though in the past he was more likely to meet the violent retaliation of her brothers. If a child is born, the girl's kinsmen may legitimately claim a similar indemnity (*ruok ruet nyal*). Usually they will not press these demands, again to avoid legal confusion in the future, and if this has been the case, the father of a girl-child will scarcely ever have the courage to make claims on her bridewealth at a later date.

Nevertheless, such claims are socially recognized and often upheld in Nuer courts, and hence become legal. They are often paid without question, even in cases of adultery, because after eighteen years or more have passed between birth and marriage, resentment of the initial wrong has long since vanished. In many cases the *genitor* and the *pater* or his heirs are the best of friends. In other cases, however, such claims may be the subject of the most acrimonious disputes and litigation.

These observations apply to female children born out of legal marriage only. A man may expect, obviously enough, no benefits from his natural sons. On the contrary, he may expect certain liabilities, for it is considered that a man should help his sons, even though they have no legal claim upon his cattle. In many cases the *genitor* will be dead by the time his natural son comes of age, and the claims of the latter on the former's heirs are often a source of friction and unpleasantness.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

woman is not legally married until this has been performed. In fact, there is no great difference in these opinions because in a normal marriage a woman's family will rarely allow her to take up residence with her husband until the *muot* has been performed.

Finally in this connexion, I must comment on a statement made by Professor Evans-Pritchard in his most recent book on the Nuer. He says:

> Most broken marriages occur during or shortly after the nuptial ceremonies. One cannot properly speak of divorce at this stage because in Nuer eyes marriage is incomplete till a child has been born. That till the birth of a child the wife is considered to belong to her own kin and not to her husband's kin is shown not only in her continuing to live with her parents but in other ways, most noticeably by the fact that the husband is held responsible for her death should she die in her first childbirth. He then has to pay compensation for homicide (*thung yika*).[1]

The use here of the word 'incomplete' seems to me relative. If a 'complete' marriage is one which is legally indissoluble, then this condition is reached only at a much later stage when at least two, and probably three, children have been born. If it is 'complete' when the rights in the woman are legally transferred from her family to her husband, then this occurs much earlier in the proceedings, at some time between the *twoc* and *muot* ceremonies, and usually long before the birth of the first child. Nor does the wife necessarily remain with her family until the first child is born though it is usual for her to return to them to give birth to it, a custom which is common to nearly all Nilotic peoples. At this point and after it any outsider would have to pay *ruok ciek*, compensation for adultery with a married woman, which is payable to her husband, and not *ruok nyal*, compensation for intercourse with an unmarried girl, which is payable to her family.

It therefore seems to me more correct to say that marriage is legally valid after the *muot*, is not dissoluble after the birth of two or often three children, and that the likelihood of divorce diminishes with the birth of each child, but I should not like to say at what point the Nuer consider it 'complete'. Finally it is incorrect to say that a husband will have to pay bloodwealth, *thung yiika*, should his wife die in giving birth to her first child. *Thung yiika* is an indemnity demanded only when the child is the result of an illicit union and is not applicable to the husband within the institution of marriage. I have already explained that a man is not liable to pay bloodwealth should he accidentally or intentionally kill his wife. Such a liability ceases as soon as brideweath cattle have been transferred and the *muot* ceremony performed. This also applies to *thung yiika*, and the only circumstances in which a woman's family might justifiably demand it from

[1] Evans-Pritchard, *Kinship and Marriage among the Nuer*, p. 93.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

848
588

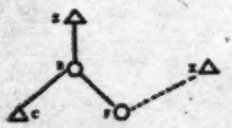
A married B. She gave birth to a son, C, but then deserted her husband and went to live with X. A's marriage to B was then dissolved by order of the court. While living with X, B gave birth to another child, this time a daughter F. B's family strongly objected to X, who had made no attempt to produce bridewealth to legalize the union, and, through the intervention of the court, he was made to leave her. Later he was prevailed upon to pay *ruok gaanke* to retain legal parenthood of his natural daughter F. B returned home, but was later married by T, who agreed to hand over a much reduced bridewealth, all that her family could expect in the circumstances. Her former husband had forgone all claims on C, but, on B's remarriage, T claimed that all the children should be his. X was persuaded to accept return of the cattle he had paid as *ruok gaanke*. The two children, and those born subsequently, were then regarded as T's. This complicated situation was reached in four stages, the final stage being a permanent one and, unless further difficulties arise, it will remain legally valid in the future.

(i)

A married B by payment of bridewealth and is therefore legal father of C.

(ii)

X seduces B, who goes to live with him. A dissolves the union and forgoes all rights in C.

(iii) 

F is born and would normally belong legally to her mother's lineage, i.e. through Z, but X pays *ruok gaanke* and becomes her legal father. X then leaves B.

(iv)

B returns home and is eventually married to T (who in this case paid only seven head of cattle for her). X's *ruok* cattle are returned to him and T claims legal parenthood of F. T also claims that he is legal father of C.

In this particular instance the mother's position is constant, for the legitimacy of the children is not traced through her except in stage (iii) in respect of F but not of C. The position of the *pater* has changed throughout. In future, when C and F have reached maturity, their position will be determined by the final picture shown in stage (iv). C will call himself son of T, though he might—as is often the case—revolt and link himself to his physiological father A. T's lineage will have undisputed claim to the father's portion of F's bridewealth, the *ghok kwi gwande*, while B's family will claim the *ghok kwi mande*, a claim which cannot be altered whatever the circumstances.

The Position of Children born of Adultery

848
684

By definition adultery cannot happen unless the woman concerned is legally married, in which case all her children, whoever the *genitor*, belong to her legal husband. He is always *pater* so long as the union remains legally valid. An adulterer cannot under any circumstances

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

848 684 legitimize his child by the payment of *ruok gaanke* while the marriage stands. A child cannot have two legal fathers at one time. It is for this reason that when an adulterer has been prevailed upon, or compelled by a court, to pay full compensation to the woman's legal husband—*ruok ciek* (not more, but sometimes less, than six head of cattle)—if a child is born and attributed to the act of adultery, all those cattle must be returned except *yang kule*,[1] which is not part of the indemnity but has special ritual significance. Unless this is done there may be confusion over the true legal father of the child: a confusion of *ruok ciek*, which is paid as compensation to the husband, and *ruok gaanke*, which should be paid to the woman's family to legitimize the child. In fact, there is not necessarily any confusion, because the compensation (*ruok ciek*) goes to the legal husband as damages, while *ruok gaanke* as a legitimization fee *should* go to the woman's family. A confusion may arise in the future, however, especially if there is a divorce, and usually a wronged husband will return the cattle without argument. This rule applies in all tribes west of the Nile, among the Zeraf tribes, and in Lou, but is not followed in Eastern Jikany.[2] We shall consider this matter again in connexion with divorce and adultery.

The Position of Children on Dissolution of Marriage

848 586 As will be seen later, if a legal union is dissolved the husband may retain legal parenthood of any children born prior to dissolution by leaving sufficient cattle as legitimization fees with his wife's family.[3]

Legitimization Fees: Recent Legislation

848 Fees payable for this purpose have varied considerably from one Nuer tribe to another. At the Chiefs' meeting of 1945, they were standardized as follows:

for a male child 5 head of cattle
for a female child 6 head of cattle.

Chiefs said that the fee payable for a girl should be higher than that for a boy because in the case of a girl the mother's family could expect to benefit materially on her marriage.

If a man declares his intention of legitimizing the child at once, he will not be expected to pay more than the five or six head of cattle, as the case may be. If, however, he disowns the child or declares that he will have nothing to do with it, he will have to pay a higher

[1] See also under Adultery (p. 156).
[2] See recent legislation on this subject, pp. 166–8.
[3] See under Dissolution of Marriage, p. 149.

8;Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

CHAPTER IV

THE VIOLATION OF RIGHTS IN WOMEN

1. ADULTERY

NUER courts come into operation only when a recognized wrong is committed, when the validity of some claim is in dispute, or when a man is unable to obtain his rights in cattle from a kinsman, relative-in-law, or debtor. The courts do not operate unless one of the parties resorts to them for one of these reasons, except in cases which are now in the nature of criminal offences: homicide, affray, assault, for example. The law is only clear when the law is broken, and it is in the analysis of disputes brought before the courts that the principles of Nuer law most clearly emerge. Disputes over marriage, that is, over the transfer and distribution of bridewealth or more probably over the return of bridewealth cattle in the event of divorce, do not usually appear before the courts unless a combination of circumstances makes a friendly settlement impossible; and it is symptomatic of the process of social disintegration now taking place in Nuerland that obligations in this connexion are increasingly ignored. In the past a man could only obtain redress if the sanctions for recognized rules of conduct operated with sufficient effect on the wrongdoer or if he had the physical strength, with the support of public opinion, to obtain his rights by force. Adultery, which is in no sense a criminal offence according to Nuer concepts, is now a common cause of legal dispute. There is reason to believe that adultery was less frequent in the past simply because the fear of physical retaliation was greater, and in a sense because acts which are now called adultery were not then treated as adultery at all.

We have seen that the Nuer do not attach great importance to physical paternity. It is legal paternity which is the primary object of marriage, but this does not mean that the relations of the sexes are indiscriminate and uncontrolled, or that a man will not resent encroachment on his exclusive rights to his wife's body. Every Nuer aims at attaching as many children to his name, and through himself to his paternal lineage, as possible. An old man will sometimes allow or even invite a stranger to have intercourse with his wife so that he may have children to further his name and interests in posterity. Whoever may be the physiological father of the children, his legal paternity is in no way impaired. As will be seen later, a man who is impotent may do likewise, though he is not likely to advertise the fact, for impotence is the object of scorn and ridicule among the Nuer.

692
[684]
611
[637]
[633]
[p. 155]

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684 837 Despite this general attitude to physical paternity, and despite the fact that birth out of wedlock is in no sense ignominious, a Nuer who is in full possession of his physical powers will bitterly resent an intrusion, and adultery is reckoned a serious infringement of a husband's rights. A husband will take violent steps to prevent it, and it is commonly recognized that a man caught in adultery runs a risk of serious injury or even death at the hands of the woman's husband. There are not, however, nowadays many instances of physical violence or injury arising from adultery (as among some Sudan tribes), and the injured husband will usually resort to the courts.

Adultery is a wrong which demands indemnification in the form of cattle, and this is nearly always enforced by the courts unless circumstances are considered to mitigate the offence. The compensation for adultery[1] (*ruak ciek*) is six head of cattle, and this is common to all Nuer tribes. Of these, five are considered to be direct compensation for the injury caused to the husband, and the sixth, *yang kule*, 'the cow of the sleeping-skin', has a ritual significance. It is considered dangerous for a man to sleep with his wife after she has had intercourse with another man. She is in a state of impurity, and a return to conjugal relations will bring misfortune to them both unless expiation is made by the guilty party. The *kul* or sleeping-skin is symbolic of conjugal relations.

Cattle Returnable if a Child is born of the act of Adultery

684 848 The majority of Nuer tribes west of the Nile, the Zeraf tribes and Lou (but not Eastern Jikany), consider that if a child is born of an adulterous union, then all cattle paid previously as compensation must be returned by the husband with the exception of *yang kule*. The reason is not far to seek if we consider the logical principles which underline the concept of legal parenthood already described.[2] It is not so much because the adulterer is considered to have done the husband a service in begetting a child on his behalf—although I have often heard Nuer give this as the reason for the return of the cattle—but because the five head of cattle paid as compensation (*ruak ciek*) have the flavour of legitimization fees (*ruak gaamke*). Unless they are returned there may be confusion of legal concepts. Subsequently, and especially if the marriage was dissolved, the adulterer might claim the child as his legal right.[3]

[1] *Dhiu*, lit. 'fornication with'. *dhe ciek* therefore means adultery, while if a child is born of the act, it will be called *ruat ciek*. *Ruak ciek*, or more precisely *ruak dhe ciek* or *ruak ruat ciek*, means compensation for adultery.

[2] See Legitimacy of Children, pp. 125–35.

[3] Nuer say that the cattle and the child must not be in the same place together—'they may not meet'. Moreover, the aggrieved husband will always get rid of these cattle as soon as possible after the birth of a child is near born. In the interim between acceptance and their ultimate disposal he will keep them with a friend and well apart from his

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Deng Kac v. *Nyuon Makwac* (*Guawar Nuer Case*, 1943)

Nyuon Makwac committed adultery with the wife of Deng Kac. Before the court he admitted his guilt and was ordered to pay six head of cattle. Some eighteen months later, when pressed for execution of the judgement, since he had only paid three cattle, he appealed because Deng's wife had in the interim borne a child, and stated that on these grounds he not only refused to pay the remaining cattle but demanded the return of two head leaving only *yang kule*, for this was the law. Evidence was produced, principally on the admission of the woman, that Nyuon was physiological father of the child. Deng Kac was therefore ordered to return two head of cattle to Nyuon, leaving only one cow as *yang kule*.

This is a simple and typical case, which illustrates the rule that only *yang kule* is due if a child is born as a result of the act of adultery.

Not Pet v. *Gac Nyol* (*Thiang Nuer Case*, 1944)

Gac Nyol committed adultery with the wife of Not Pet. Not instituted a legal case against Gac before the Thiang court. The accusation was admitted and Gac ordered to pay six head of cattle as *ruok ciek*. Subsequently the woman gave birth to a child, and Gac appealed for the return of five of the cattle on the grounds that the child was his. Court examined the evidence and ruled that the child was born too long after the act of adultery for Gac to be physiological father. Appeal dismissed.

This raises a point which is of some difficulty to the Nuer. What constitutes proof of physical paternity? There may of course be evidence that the husband was away at the time, and it is in the interests of the adulterer, at this point in the proceedings, to admit access to the woman because he is seeking the return of the cattle. The time element is also of importance and possibly presents a difficulty, but the Nuer are nowadays better able to assess time than they were in the past. Reference can be made to court sittings, inter-tribal meetings, tribute collection, as well as to the seasons. In most cases the evidence of the woman is given weighty consideration.

Legality of Marriage is a Fundamental Consideration

The legality of marriage is also a primary consideration. We have seen that the legality of marriage is established by the payment of cattle and the performance of ceremonies. A man clearly cannot claim damages for adultery with a woman who is not his legal wife, even if he cohabits with her.

Kwol Bilia v. *Cuol Puot* (*Lak Nuer Case*)

Kwol Bilia (a government policeman) claimed damages from Cuol Puot for adultery with his wife. Act of adultery was admitted, but Cuol pleaded

own herd. An emotional tie always exists between a *gwatar* and his natural child and, I think, Nuer do not wish to give legal emphasis to this by the transference of cattle. As we have seen, even in adultery this tie is recognised, for the physical father may claim a cow on the marriage of his daughter: the *yang lata* or 'cow of the loins'.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

•684 588

that Kwol was in no sense the husband of the woman. She was *keagh* and merely living as his mistress. Court adjourned the case until further evidence could be got from Western Nuer District, where the woman's family lived (obtained through the District offices concerned). The evidence finally produced showed that Kwol had paid her family three head of cattle and a small sum of money. It was also proved that the woman had been living with another man in Malakal (Province Headquarters) until she took up with Kwol. Court ruled that the woman was *keagh* (unmarried) and dismissed the case.

[177]

This kind of dispute is, as a matter of fact, not infrequent, and is the result of the increasing number of unmarried women who move from one man to another or live at Government Posts where they have greater freedom and are attracted by the facilities which urban life provides. The men who cohabit with them are often themselves detribalized in the sense that they seek permanent work and cash. They are usually from poor families, and cannot afford to get married in the normal way. In the first instance, they seek work so that they can buy cattle at the auction sales held periodically by the Government, but soon they become attached to an urban life and find that the expense involved gives them little opportunity to save in any case.

Puot Dwil v. *Mut Loinyjok* (*Central Nuer Appeal*)

Puot Dwil claimed damages from Mut Loinyjok for adultery with his wife. Mut agreed, and paid two of the six head of cattle awarded, but subsequently demanded their return on the grounds that Puot had not married the woman. This argument was finally taken before a court, which ruled that the union was not legal. The woman was *keagh* (unmarried) at the time because *kare gloke tuoc*, 'he had not performed the ceremony of *tuoc*', the cattle had not been bespoken. Further, and this was regarded as all-important, *ee ciekde kare mut*, 'his wife had not been shaved', referring to the ceremony of *mut*. Court ruled that cattle should be returned to Mut. Puot then appealed, and brought further evidence that not only had the bridewealth cattle been paid (17 in all), but that he had full intention of performing the ceremony of *mut* when the incident occurred. He had not carried out his intention because of the incident. Puot further stated that he would insist on dissolution of marriage unless its legality was accepted. Appeal court accepted the evidence that the ceremony of *tuoc gloke* had been performed, and that evidence of preparations for the *mut* on his part was also evidence of his intention. Court ordered Mut to pay a total of six head of cattle, i.e. full compensation for adultery.

The Main Legal Principles

684

The main legal principles concerning adultery can therefore be summarized as follows:

(i) An act of adultery is a wrong against the legal husband of the woman, and requires the payment of compensation in the form of six head of cattle, of which five are intended to appease the wrath of the husband for an infringement of his rights in his wife, and the sixth, called *yang kule*, is to compensate him for the risk of impurity

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

and its consequences which he runs in resuming sexual relations with his wife. *Yang hule* is both indemnification and spiritual expiation.

(ii) If a child is born of the act of adultery, the five head of cattle must be returned to the adulterer to avoid any possibility of confusion over the legal paternity of that child, but *yang hule* must always remain with the husband.[1]

Application of these Principles depends on Circumstances

Adultery is therefore an offence because it amounts to an infringement of the legal husband's physical rights in his wife, and also a wrong against the ritual status of the husband which may be impaired by his wife's impurity. This is the law, although its application will depend on a variety of circumstances: the physical condition of the husband and of the wife; the morals of the wife and the age of the wife; the position in the social structure of the parties concerned.

Impotence of the Husband

The physical potency of the husband is sometimes questioned by the defendant, and if the point is proved, the court will rarely enforce the payment of compensation or even of *yang hule*. A man's physical rights in his wife will not be guarded or upheld by the law if he cannot take advantage of them, nor is he likely to suffer any ritual impurity if he is unable to have sexual relations with his wife.[2] On the other hand, it may be argued that the legal husband has acquired rights in his wife by the transfer of cattle to her kin, and if he is unable to enjoy those rights personally, at least he is entitled to dispose of them as he pleases. This at any rate would carry the theory of rights acquired by the transfer of cattle to its logical conclusion, but the Nuer do not look at it in quite this way. We have seen that impotence is recognized as a ground for divorce on the part of the woman, and a man who is impotent has failed in his duties as a husband. In these circumstances he should be pleased that his wife has borne him a child, whoever the father may be. To the Nuer, if he is not pleased, he ought to be.

In cases of this sort a court will sometimes enforce the payment of *yang hule*, though by no means always, but will certainly never allow a claim for the rest of the accepted number of cattle. The concept reflects not so much a definite law as a circumstance which any court

[1] That this rule has been altered by recent legislation will be clear later.

[2] There is, I think, a conscious distinction here. If the husband is impotent and unable to have intercourse with his wife, then there is no risk of the impurity which the *yang hule* is intended to neutralize. If he is able to enjoy sexual intercourse with her, but is sterile and unable to beget children, then the adulterer will still be prosecuted against liability for full compensation (*ruak nieth*), but is liable to pay *yang hule*. The husband, though sterile, still runs the risk of contamination.

Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684 833 837

will consider in assessing the wrong and the amount of compensation to be paid. It is a plea which is frequently raised by defendants to a charge of adultery and is, of course, not easy to prove. Evidence is based not so much on the statement of the wife as on general reputation (and it must be remembered that in the intimate life the Nuer lead there is not much which can be concealed), and also on the existence or otherwise of other children and the evidence of co-wives if there are any.

Barrenness of the Wife and Age of the Wife

684 837

It is sometimes held that adultery with a woman who is known to be barren is not an offence, though this view is certainly not universally held. Adultery with a woman who has borne several children and is elderly is also considered a minor offence and rarely requires compensation, especially if she has adult children. At most *yang kuic* will be demanded in these circumstances.[1]

Morals of the Wife

684 837 593

The temperament and morals of the wife are also factors which a Nuer court will consider. If the husband, usually a man who has been absent from home for a long time, brings charges of adultery against two or more men and the charge is proven, the court will order that each shall pay part of the compensation.[2] There is a limit to this. Nuer consider that a woman who has had sexual relations with more than three men is a *cieh ne jok*, a 'loose woman', and that the men concerned cannot be held responsible. For this reason the defendant or defendants in a case of adultery will often attempt to prove that the woman has committed adultery with a fourth man. In this case a court will not enforce the payment of compensation, or of *yang kuic*, though, if a child is born of one of them, it may compel him to pay *yang kuic*. In such circumstances, the husband will often institute a divorce against his wife, and if there is any dispute between himself and his wife's relatives, a court will usually take his side.

Jal Bath v. *Gai Nyal* (*Thiang: Central Nuer Appeal*)

Jal Bath claimed compensation (*ruak cieh*) from Gai Nyal on grounds of adultery with his legal wife Nyandaang. A child had been born in consequence of the act of adultery, or so Jal alleged. This was admitted by Gai. (It was in his interests to do so.) Jal claimed *yang kuic* only, but Gai refused to pay. The matter was taken to court and Gai ordered to pay. Some months later,

[1] This was recorded at the Nuer Chiefs' Council Meeting of 1945: 'When a man commits adultery with a woman who has adult sons or daughters, he is only liable to pay *yang kuic* and not full compensation.'

[2] E.g. if two men, each will pay three head of cattle, if three men, each will pay two head of cattle.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Gai appealed on the grounds that he had evidence that Nyandeang had committed adultery with three other men, Koh Col, Ngwan Din, Tap Bath, and had done so during the latter period as with Gai, and in the absence of Jal. Appeal court accepted this evidence as true. Jal then stated that he did not deny the allegations of Gai, though he had not heard of them before, but the evidence was not relevant to the case. He had claimed *yang hale* only, not full compensation. He admitted Gai was father of the child, and so did Gai. Court upheld previous judgements and ruled that Jal should keep the *yang hale*.

Questioned on the legal issues involved, the court held that if a man has sexual intercourse with a woman who is the legal wife of another, he is liable to pay six head of cattle which include *yang hale*. If she bears a child attributed to the act of the adulterer, five head must be returned, *yang hale* remains. The fact that the woman is proved to have committed adultery with other men, if more than three men are involved, absolves all of them from paying compensation whether a child is born or not, but if one of them is proved to be the father of the child, he must still pay *yang hale*.[1]

Compensation cannot be Claimed more than twice where one Woman is Concerned

It is also generally held that a man cannot claim compensation for adultery with his wife (the same wife) on more than two occasions. After the fulfilment of two claims of this sort, in which he may have received no less than twelve head of cattle, his wife acquires the reputation of being 'loose'. He will certainly not succeed in a claim instigated out of court, and it is extremely unlikely that a Nuer court would uphold his claim. Moreover he may well be suspected of exploiting his wife's physical charms to his own advantage.

Adultery with Widows

When a woman whose husband is dead has sexual relations with a man without the express permission of her husband's legal heirs, damages for adultery may be claimed, but the right is not often exercised. It depends on a variety of circumstances, particularly the age of the woman, for, if she is young and attractive, one of her husband's kinsmen will wish her to live with him. As we have seen, the main object in the minds of the dead husband's kinsmen is that the woman shall bear children to his name, and they are usually prepared to give her a wide choice, provided she does not go to live too far away from them. They will often object if she goes to live with a man whom they have not accepted as her lover (*buw*), and they will also object

[1] For recent legislation on this subject, p. 167. The idea is a Nuer one, but the amendments in the result of legislation prompted by the Administration.

8:Howell E. G-5 (1942-1944)1954
FJ22 Nuer FJ22

684
587

if the act of adultery, for it amounts to this in such circumstances, is casual with no permanent basis of cohabitation. In 'widow-concubinage' a stable relationship between the widow's mate and the kinsmen of her husband is naturally desirable. They will expect him to treat them as kinsmen, and between them will arise a relationship which is patterned on kinship. The rights of the husband in his wife are inherited and upheld by his heirs, and they are entitled to compensation for an infringement of those rights.

Tec Nyagh v. *Kwoiny Ruok*

Jegh married Nyabwogh. Jegh died shortly afterwards without issue. Nyabwogh was a young woman, and Tec, as one of Jegh's heirs, wished her to live with him so that he might benefit from her presence in the home, not only as a mate but in carrying out domestic duties. He had no wife himself. Nyabwogh ran off with Kwoiny Ruok, who was living in another part of the country. Tec made some effort to persuade her to return to him, but she refused. He then went to court and judgement was given that Kwoiny, who was deemed responsible for enticing Nyabwogh away, should pay one cow as *yang kule*. His act was considered to be adultery. Court ordered immediate return of Nyabwogh to Tec.[1]

A case of this sort is not common, and I have no record of a court ordering the payment of compensation in full, only of *yang kule*, although theoretically the deceased's heirs have the right to claim it. In this case Nyabwogh had borne a child to Kwoiny Ruok, who, as physiological father, would in any case only be liable to pay *yang kule*.

From these and other cases of the same nature, it is clear that the death of a husband does not theoretically imply a reduction in his legal rights over his wife and her children whoever their physiological father may be, and that these rights are guarded by his heirs. It is also clear that the husband's domestic, economic, and physical rights are not diminished in theory, but whether his heirs will lay strict claim to them depends on a variety of circumstances. If the wife is young, his heirs will be reluctant to let her go, though they do not usually insist on her staying. In any case she is likely to have a wide choice from among his kinsmen. They will also wish to benefit from her domestic and economic activities and, of course, always prefer that she should stay within their community. Even if she goes to a man outside the community, they wish her relations with him to be stable and permanent and, if accepted, he will be drawn to some extent into the field of kinship and become one of them. 'Widow-concubinage' does not imply complete sexual freedom of an indiscriminate kind. At any time the dead

[1] This was not the end of this case. It was subsequently discovered that Nyabwogh had gone off to live with another man, an arrangement made by her brother, who had also illegally accepted three head of cattle, although she was already legally married to Jegh and there had been no return of bridewealth. Finally, the marriage was dissolved, her brother was punished for what is considered a serious wrong, and Kwoiny received his cow back again.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

husband's heirs may draw attention to their rights in the woman and, if she has relations with a man who is objectionable to them, they may treat the case as one of normal adultery and claim damages. Such cases are nowadays usually taken to court, and the line adopted by its members will again depend on circumstances. They will, however, admit the validity of the claim even though they are not always prepared to enforce it.

Bang Wic v. Lia Ran (Dok Nuer Case)

Lia Ran committed adultery with the wife of Bang's deceased brother. The case was brought before the Dok court, which judged that no compensation was necessary, 'as the woman is a widow'. This judgement was, however, revised by the appeal court, and Lia ordered to pay to Bang one cow as *yang kuk*.

Adultery and 'Ghost-Marriage'

The same theoretical law applies to 'ghost-marriages', but the attitude is different. A 'ghost-wife' is actually married by a man's heir *after* his death, and the vicarious husband in this case performs all the ceremonial of marriage as well as operating the transfer of bride-wealth. Except that legal paternity is vested in the person of the deceased, which fact is of greater significance when the children of the union come of age, the union does not differ from a straightforward simple legal marriage. Moreover the vicarious husband, in his capacity of legal heir to the deceased, stands in the same relationship to the woman and the children as her 'ghost-husband'. The only real difference is that the children will link their names in the lineage structure to the latter, and this is a matter of greater importance in posterity than the present. For this reason, the emotional attitude of the vicarious husband to the wife, their relationship, and their life together are indistinguishable from those found in simple legal marriage, and considering the high proportion of 'ghost-marriages' this is not surprising. The woman is usually his own choice, he has courted her, won her, married her, and his relationship is therefore much more intense and personal than his relationship with his brother's widow. Hence, though a man may overlook an act of adultery with his brother's widow, or the widow of any man to whom he is legal heir, he will certainly not do so in the case of his brother's 'ghost-wife'. The reaction to adultery in 'ghost-marriage' is identical with that found in simple legal marriages, and it is doubtful if a Nuer court would regard the theoretical distinction as relevant to the issue.

Adultery with the Wives of Kinsmen

The full rate of compensation is usually demanded unless the husband and the adulterer are on exceptionally good terms in other

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684
835

respects, or their relationship in the kinship structure is sufficiently close to modify feelings of moral indignation on the part of the husband. Although the wives of kinsmen are brought within the sphere of kinship by the process of marriage, and to have relations with the wife of a kinsman is in a sense tantamount to a breach of the rules of exogamy, this is modified by the feeling that a wife, acquired by the transfer of cattle in which other kinsmen have limited rights, is theoretically the wife of all of them. Yet it is not considered correct that two kinsmen should have sexual relations with the same woman at the same period. There is no real conflict in these two concepts, but the attitude behind the payment of *yang kule* includes an idea that sexual relations with the legal wife of another man create an impurity, and that there is greater impurity if two men of the same kinship group have sexual relations with the same woman. It is felt that the wife of a kinsman is in some degree also a kinswoman, especially as a potential mother of kinsmen in the next generation. The act is therefore tantamount to incest (*rual*).

These ideas appear in the arguments put forward in the course of litigation in the courts today. The court will attempt to persuade the wronged husband to accept less than five head of cattle, though they will normally enforce payment of the sixth, the *yang kule*. Talking to the husband they will say of the adulterer: 'Is not this man your kinsman? Is it not a man's duty to assist his kinsman?' The implications are that adultery is an offence which brings greater spiritual dangers when the husband and the adulterer are kinsmen, but just because they are kinsmen it is an offence which must be wiped out by expiation in the form of sacrifice and prayer. One does not pay compensation to kinsmen because they are the persons who assist in the collection of compensation for offences against others. The intensity with which these ideas operate is relative and depends on the relationship of the principals.

Kin Nyak v. *Pagwir Wiedier* (*Bul: Western Nuer Appeal*)

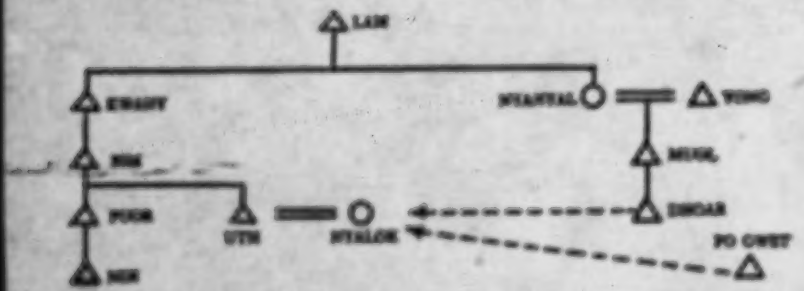
Pagwir committed adultery with Kin's wife. Court awarded reduced compensation of 3 cattle to Kin on the grounds that Kin and Pagwir are kinsmen (sometime great-grandfather). Pagwir refused to pay, and was then ordered by the court to pay full compensation of 6 cattle as punishment. The court was empowered by Pagwir's defiance of its orders. The use of the word punishment is perhaps incorrect here because the additional cattle went to the plaintiff, but the motive was punishment for flagrant disobedience.

Nin Puor v. *Dhour Muol and Pe Gwot* (*Lou: Central Nuer Appeal*)

Dhour committed adultery with Nyaluk, wife of Nin's paternal uncle Uth. Uth was living at the time, but died before the case was brought to court. Subsequently Pe Gwot also committed adultery with Nyaluk. The chronological sequence is here important, though it was not realized by the court in the initial stages of the dispute.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Dhoar and Po were absent when these allegations were made against them by Nin, but since there seemed to be no doubt about Po's guilt his father Gwet Thic (himself a chief) was prevailed upon to pay compensation as *ruok cieh*, and had already handed over 3 head of cattle when Po and Dhoar returned. In the meantime Nyaink had confessed that she had also committed adultery with Dhoar, an act which was held to be incest (*ruat*), and also that Uth had



died as a result—he 'had died of incest', *or how he ruat*. This complicated case was naturally the subject of prolonged discussion in the court which finally ruled that:

(i) Po had sexual relations with the woman *after* Uth's death, and even had some encouragement from Uth's family. Court held that he must be treated as the woman's *kew* (i.e. recognized lover in 'widow-concubinage'). Po was therefore in no way liable to pay compensation, and those cattle already handed over to Nin by Po's father Gwet were returned.

(ii) Dhoar committed incest (*ruat*) by having sexual relations with Nyaink while her husband Uth was still living, and his act must be accepted as the cause of Uth's death. Dhoar to pay two cattle to Nin as Uth's heir; one cow *as yang kuic*, one bull *as yang ne kuic ke ruat*, 'the fine of dividing for incest'. He [illegible] in the manner prescribed by custom in order to avoid further evil effects of the act of incest.

Further Qualifying Circumstances

Nuer sometimes make a distinction between what they call *dhe cieh dhor*, 'adultery with a woman outside (the home)' and *dhe cieh ciang*, 'adultery with a woman in the home'. The distinction is not really a valid one from the legal point of view, and the meaning is sometimes contradictory. *Dhe cieh dhor* sometimes implies an act of adultery committed with a woman who is not living with her husband—a less serious offence than *dhe cieh ciang*—but it can also mean adultery with enticement to desert the husband, i.e. that the adulterer has run away with the woman, or attempted to do so. This distinction is not reflected in the scale of compensation; the maximum is always six head of cattle whatever the circumstances, but in the case of *dhe cieh dhor* in the latter sense, the indignation of the wronged husband and his kin will be more intense and they will not be so ready to accept less than six head as a compromise. For this reason the distinction is now

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684

accepted in court as relevant, and a court will nearly always award full compensation in cases of *dhu ciek dhor* when the adulterer has enticed the woman to leave her husband.

Liability Ceases with the Death of the Adulterer

Mayol Lak v. *Dayim Mako* (*Yikany Nuer Appeal*)

Dayim committed adulterey with Mayol's wife and paid five head of cattle in compensation. She then committed adultery with Bul Thic. No compensation was paid because Bul died shortly after. Dayim then appealed on the grounds that if Bul had paid no compensation, why should he? Court dismissed this appeal as frivolous.

There is nothing unusual in this case but it shows that liability for compensation for adultery ceases with the death of the adulterer and does not fall on his heirs. Although a man may expect his relatives to assist him in adversity and to help him in the collection of the indemnity cattle, adultery is regarded as largely an individual offence.

Return of Compensation Cattle on Dissolution of Marriage

It is a generally accepted rule among the Nuer that an adulterer may reclaim any cattle paid by him as compensation for his offence should the husband subsequently divorce his wife. This at least is theoretical law, though whether it was followed in the past is problematical. This rule is at any rate upheld in Nuer courts as the following example indicates:

Gwigwi Kouk v. *Nyot Laajar* (*Yikany Nuer Case*)

Nyot committed adultery with Gwigwi's wife. Court awarded six head of cattle as compensation, of which only four were actually paid. The wife then died, and the union was dissolved. Court then ordered return of these cattle to Nyot with the exception of one cow which had been paid as *thany* (bloodwealth)[1] by Gwigwi in the interim.

This rule, as will be seen later, has been altered recently. It is unlikely that any action would be taken in instances where a considerable time had elapsed between the act of adultery and divorce, but the idea is essentially a Nuer one and not an innovation.

Recent Legislation

At the Nuer Chiefs' Council of 1945, the subject of adultery was discussed with considerable interest, more so perhaps than is usual

[1] Cattle which die by misadventure in the possession of the wronged husband are not returnable, a rule which is now extended to cattle paid as compensation for homicide. See p. 150.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

on such occasions. It was generally felt that adultery was on the increase and was a threat to the stability of marriage as well as to public security. It was held by representatives from Eastern Nuer District that in their own country there was never any question of returning compensation cattle to the adulterer should a child be born of his act. Chiefs of the Zeraf and Western Nuer tribes were prevailed upon to accept this view, and it became universal law among the Nuer that six head should be paid whether a child was born or not. My own view is that Zeraf and Western Nuer practice is more in accord with Nuer concepts. These tribes admitted that steps should be taken to stop adultery, but said that the way to do so was to introduce penal sanctions as a deterrent rather than alter a principle which to them is fundamental and thus run the risk of confusion over the status and legitimacy of children. This became even more apparent at the meeting of 1949.

At this later meeting, the law that compensation cattle should be returned to the adulterer if the marriage is dissolved, was attacked on moral grounds by one of the British representatives of the Administration present. It was held that an adulterer should not be allowed to benefit in such circumstances, and that there was often collusion between the adulterer and the wife's family in obtaining a divorce so that both might benefit. This argument is clearly fallacious, for whatever the adulterer may gain thereby, the woman's family gain nothing; they will have all the trouble of returning the bridewealth cattle to the husband and will not necessarily receive more from the adulterer even if he chooses to marry the woman. At the discussion which followed it was those tribes who had previously upheld the rule that a husband is entitled only to one *cow* (*yang kuic*) if a child is born of the act of adultery, who most steadfastly opposed the proposal that the husband should retain the compensation cattle in the event of a divorce. They opposed even more strongly the proposal that the cattle should be handed to the wife's family. This latter proposal is at least logical, for the husband in relinquishing his rights over his wife should waive any benefits gained thereby in favour of her family.[1] Yet by accepting these cattle the wife's family would be admitting the adulterer's claim to legal parenthood of the child, and if the former husband had also left cattle with them as legitimization fees there

[1] It may be argued that the act of adultery was an offence against the husband alone. This at least would be consistent when we consider what I have termed 'extra marital payments' in connection with divorce (see p. 151). But the Nuer do not look at the matter in this way, especially if a child has been born. Cattle were only claimable in the first instance because the husband held legal rights in his wife. In dissolving the union and thereby waiving these rights he must forgo any benefits accrued in the past. Nuer themselves explain the matter in terms of rights (*ruany*). The husband had a right (*ye tabe ruany*), but now it is the wife's family who have the right. Yet they cannot transfer it because of the legal confusion it may cause. Hence the cattle must be returned to the adulterer.

S:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684 would be a clash of interests and a subsequent confusion of status. The embarrassing results are clear enough when we consider the complications which would arise over the claims to bridewealth if the child were a girl, or the claims on the bridewealth of others if the child were a boy. Nuer law is designed to avoid such confusion. The only way out of the dilemma was, as usual, to throw responsibility on the Administration and to decide that, in the event of a divorce, cattle paid as compensation for adultery should go to the Government. The perplexing implications of this decision will be discussed in a later chapter, but it will be seen that adultery is now a civil offence in the first instance and a criminal offence, enforceable under the Chiefs' Courts Ordinance, in the second.

Further legislation at these meetings is recorded here, though the general principles have already been stated:

> Chiefs agreed that:
> (i) A man who repeatedly commits adultery with the same woman is not liable to pay compensation (*ruok*) more than twice, but shall be liable to punishment by imprisonment or fine.
> (ii) Where two or more men commit adultery with the same woman, the following rules are to apply in future:
> If 2 men do so, then each shall pay 3 head of cattle=6.
> If 3 men do so, then each shall pay 2 head of cattle=6.
> If 4 men do so, then no compensation may be demanded by the woman's husband.
> (iii) A man can only claim compensation for adultery for the same wife twice; e.g. B commits adultery with A's wife and pays 6 head of cattle (*ruok*). Shortly afterwards C does the same, and he pays 6 head of cattle too. Should anyone else do so, no further compensation is payable, but the third adulterer renders himself liable to a fine or imprisonment.[1]

These rules are not so much an innovation or an alteration as an articulation of existing practice. It is difficult to say whether they are based on exact tradition or whether they represent an evolution of case law based on past precedents. It is probable that each has an element of traditional practice as a basis, but it is unlikely that any were applied in the past with the rigidity implied, even in disputes which reached the final stage of settlement. It is interesting to note too that nowadays when civil liability ceases, penal sanctions may still be applied.

2. SEXUAL INTERCOURSE WITH UNMARRIED WOMEN AND GIRLS

Sexual Intercourse with Unmarried Concubines

684 588 Nuer talk of *dhe ciek*, meaning simply sexual intercourse with any woman, but it usually implies that the woman is legally married

[1] Extracts from Minutes of the Nuer Chiefs' Council Meeting, 1943 (unpublished).

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

whether the marriage is a simple legal union, 'ghost-marriage', leviratic union, or 'widow-concubinage'. Hence the term *dhu ciek* usually implies a violation of marriage rights and closely approximates to the European concept of adultery. We have already seen that, if the wrongdoer can prove that his mistress is not legally married to the man who claims to be her husband, no action for adultery lies. The woman in such circumstances is *ciek me keagh*; she is *ciek*, having the status of a married woman, but she is *keagh*, unmarried. This does not necessarily imply any feeling of disrespect, for the expression is sometimes used of a woman who has not yet completed the full processes of legal marriage with her husband, or sometimes of a woman who has been married and divorced and awaits remarriage of a respectable nature. *Keagh*, however, has a wide range of meaning and, used contemptuously, implies that the woman is wanton and self-willed and that, if she is not legally married, she ought to be. In all these circumstances it is her family who have rights in her, and legally it is for them to claim damages for any infringement of those rights. They rarely do so and, if they did, would be unlikely to receive the support of a Nuer court.

Such women often cohabit with men on a reasonably stable basis, and the union sometimes has the appearance of legality. This is particularly so in detribalized communities to which women of this temperament tend to go, and there are sometimes disputes which appear before the courts. It is noticeable that, although a Nuer court will never award compensation to the man who claims to be husband (*cou*) of the woman, nor, indeed, to her family, they will often punish the offender. Penal sanctions are being applied to offences which must have been comparatively rare in the past and for which there is no traditional remedy.

The Seduction of Unmarried Girls: dhu nyal

The seduction of a young girl (*nyal*) is considered a wrong. Nuer will say it is a great wrong, a *duer meδit*, but what they imply is that a girl who gains the reputation of offering herself indiscriminately to any young man will not be approached with genuine offers of marriage. She will be a *nyal me jok*, a 'bitch'.[1] Such girls, once they have gained

[1] This expression is as disrespectful and rude as it would be in our own language, and is not used openly. I recall a girl of this sort in Thiang country who appeared regularly at dances in company with girls obviously much younger than herself. She appeared to me to be attractive, and I asked some youths of my acquaintance whether they did not think so. They replied that she was extremely attractive, a statement which was followed by a good deal of chaffing and laughter on the part of their fellows. Subsequently I was told by one of my followers that she was considered *jok*, and although older men were much attracted to her, none of them wished to marry her, and the young men left her alone because to have relations with her was regarded as slightly ridiculous and they feared the scorn of other girls. The girl eventually took up with an Arab merchant. See example, *Cuey Tut* v. *Dar Jal* (p. 172).

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684 836 an unsavoury reputation, may have to wait for a long time for marriage and are also *jut* (which is merely an unmarried girl beyond the age at which girls are usually expected to marry), and when a serious suitor does come along, he will do so because her family are likely to ask less cattle for her than is usual. She is likely to marry a poor man if she marries at all.

Illicit sexual intercourse with an unmarried girl is therefore a wrong in itself, but it is the effects that public knowledge of her wantonness will have on her reputation which are regarded as important. Technically a girl (*nyal*) is supposed to be a virgin, but by the time she reaches the stage of marriage this is unlikely to be a fact. Her family do not necessarily object on any moral principles. Their attitude is a reflection of their real desire to see her properly married so that they may acquire cattle for their own marriages, and they do not tolerate any attention from an outsider which is likely to compromise her chances of making a suitable match with a man who has cattle. A young man with no cattle who pays marked attention to a girl will be warned off by her brothers. But unless her chances are lessened by a reputation for promiscuity in the choice and number of her lovers her family are unlikely to take action, and a complaint on their part will rarely be recognized in a Nuer court. Nuer say, however, that *dhu nyal* is an offence which may require the payment of compensation (*ruok nyal*), and by this they mean that if a complaint is made by a girl's family, and there is proof that they have suffered an injury or potential loss, compensation should be paid to them.

Dhu nyal cieng and *Dhu nyal dhor*

Nuer also make the distinction between what they call *dhu nyal dhor*, 'fornication with an unmarried girl outside (or in the bush)' and *dhu nyal cieng*, 'fornication with an unmarried girl in the home'. The terms are not very clear, since *dhu nyal cieng* is often used to describe cases of elopement—i.e. when the girl has been taken from her home. The former offence, *dhu nyal dhor*, is considered much less serious, and refers largely to casual encounters at dances held by the young people.

Elopement and Abduction: kuil nyal

684 It is considered a much more serious offence if a man entices an unmarried girl away from her family and persuades her to live with him. Whether a child is born of the union or not, a Nuer court will take action against the wrongdoer and compel him to marry the girl or pay compensation which will not be returned even if the girl is subsequently married to another man. To seduce a girl, persuade her to take up residence away from her home, so that she appears to be

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

a married woman, without the transfer of cattle, is *kwil nyal*, 'theft of a girl'. The girl will sometimes assume the costume of a married woman (a leather apron or skirt) and, in examining the circumstances of the case, a court will usually ask whether this has happened or not. It is evidence against the wrongdoer, and implies a greater wrong.

Riek Nuon v. *Nger Cut* (*Leik: Western Nuer Appeal*)

Nger seduced Riek's daughter. The girl did not become pregnant, but Riek claimed that Nger's attentions were undesirable, and had compromised his daughter's chances of marriage. In considering the case, the court first examined Nger's circumstances, and stated that he should marry the girl. On finding that he had very few cattle and no prospects of more, the court ordered him to pay two head of cattle as *ruok nyal* to Riek. In the course of the discussions it appeared that Nger had several times been warned to keep away from the girl, not only by her family, but by the local headman (*gatuot*), and finally by the chief. For this reason Nger was sentenced to one year's imprisonment, and the sentence was upheld on appeal.

Liep Balou v. *Biel Dang* (*Dok Nuer Case*)

Biel eloped with Liep's sister. He was subsequently arrested by the chief's police and brought before the court. It was found that Biel had no cattle at all and no prospects of obtaining any. The girl was not pregnant, and the court noted that this was a single incident. Elopement is, however, a serious offence, and Biel was sentenced to six months' imprisonment, though no compensation was awarded.

It is doubtful whether the present compensation, which most Nuer tribes say should be a cow-calf and a bull-calf, though some say three head of cattle, has any basis in tradition. It is more probably based on past precedents from the courts and, as we have seen, is not often awarded unless there has been a flagrant attempt to avoid the ritual of marriage and the transfer of bridewealth or the girl was betrothed to some other man at the time.

Sexual Intercourse with an Unmarried Girl resulting in Pregnancy: ruat nyal

It is another matter if the girl gives birth to a child. It is clear that in the past violent action might be taken against a girl's lover by her brothers, who would seek to compel him to marry her. They would seize cattle from his home and, depending again on their relationship in the social structure, and the relative strength of the sanctions for social integration between the communities to which they belonged, the seizure would be accepted and regarded as a preliminary move towards marriage. Resistance might lead to an open battle between them and even to a feud. Hence, within a limited community or tribal segment, there were strong sanctions derived from fear of retaliation which made for amicable settlement of a case of this sort. It was

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684
[848]

also possible to legitimize a child born in these circumstances by the payment of fees (*ruok gaanke* or *ruok muor*).[1]

Cany Tut v. *Dar Jal* and *Kwol Panyal* (*Lak Nuer Case*)

Dar Jal seduced the sister of Cany Tut. She gave birth to a child and, since Dar refused to marry her or to legitimize the child, Cany took the case to court. The court ordered Dar to pay a cow-calf and a bull-calf as *ruok nyal*. Dar was dissatisfied with this judgement and brought the matter to court again on the grounds that another man, Kwol Panyal, was the father of the child. Judgement was reversed and the cattle were returned to Dar. Cany then demanded *ruok nyal* from Kwol Panyal. The latter countered by proving that the girl was wanton, *nyal me jok*. Court accepted this and refused to enforce payment of *ruok nyal*. This judgement was subsequently confirmed on appeal.

Nguot Reth v. *Mut Roa* (*Gaawar Appeal*)

Mut Roa seduced Nyadeb Reth, an unmarried girl (about nineteen years of age). She conceived and bore a child to him, and the dispute which followed was referred to the court. Mut had insufficient cattle to marry the girl, and was ordered to pay compensation *ruok* (*ruet*) *nyal* consisting of a cow-calf and a bull-calf. The girl was subsequently married to another man, but Mut's cattle were not returned to him. Mut then appealed, not on the grounds that his cattle should be returned to him, but that he had actually paid a full-grown cow in place of the cow-calf ordered by the court. He stated that the traditional scale of compensation in such circumstances was as the court directed, a cow-calf and a bull-calf. Court ruled that this was now irrelevant, because had he paid a cow-calf it would by that time be a large cow: it would have grown in the interval.

It is an even more serious offence for a man to return to a girl after he has been made to pay compensation for seducing her. If she has borne one child, her chances of marrying well are not generally lessened. Indeed some Nuer say that her chances are enhanced, for it is thereby proved that she is fertile, and this is a serious consideration to a man contemplating marriage. To return again to the same girl, and particularly to get her with child for the second time, may cause grave loss to her family. A man will be unlikely to look at her as a possible wife if this has happened, and if she gets married at all it will probably be to a man who is poor in cattle and unable to afford a full bridewealth. An offence of this sort is nowadays almost always punished, not only by forcing the guilty party to pay compensation, but by fine or imprisonment as well. Again penal sanctions, previously unknown to the Nuer, are now commonly applied.

Top Buth v. *Manyang Tut* (*Thiang: Central Nuer Appeal*)

Manyang Tut got Nyabuk, unmarried daughter of Top Buth, with child. Manyang refused to marry her, and had insufficient cattle to do so anyway. The court ordered payment of two head of cattle as *ruok nyal*. This was paid. Subsequently Nyabuk ran off to Manyang again and lived with him for a short time, though no child was conceived on this occasion. Court ordered the

[1] See 'Legitimacy of Children', p. 132.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684

immediate return of Nyaluk to her family, though no further *ruok nyal* was demanded. Manyang was sentenced to five months' imprisonment.

In this case the court punished the wrongdoer because not only had he committed a serious offence, but he had openly defied the original order of the court.

Compensation (ruok nyal) and Legitimization Fees (ruok gaanke or muor)

684
848

Legitimization fees for children have already been discussed in a separate section.[1] It is worth mentioning here that a man who gets an unmarried girl (*nyal*) with child is not expected to pay both compensation (*ruok nyal*) and legitimization fees (*ruok gaanke* or *muor*) as well. The two payments are in a sense interchangeable. A man who has paid compensation may increase the payment if it is subsequently discovered that the girl is with child, thereby changing it to a recognized fee to legitimize that child. On the other hand, if there is any likelihood of the girl getting married fairly soon after the event, her family may waive their claim to *ruok nyal*, for then the child will go with its mother to her future husband. In some instances even if legitimization fees have been paid they will be returned on the girl's marriage.

Can (akwen v. *Tutkwac Diu (Thiang: Central Nuer Appeal)*

Tutkwac Diu seduced the sister of Can Cakwen, and she gave birth to a child. Tutkwac paid no compensation (*ruok nyal*) for this, and the girl was subsequently married by Buth Jal. Some time later Tutkwac asked to be allowed to pay *ruok gaanke* to legitimize the child to his own name. A dispute arose, and the matter was taken to court. Court ruled that Tutkwac had no right to the child, as the girl's marriage to Buth Jal was by then legally valid. He had performed the ceremony of *muor*, and the child had in fact been born after the marriage.

A man who has paid legitimization fees for his child is not usually able to reclaim them should the child die, as he would be able to do in other circumstances. The legitimization fees become compensation in retrospect.

Lam Tuiel v. *Jeh Col (Jikany: Western Nuer Appeal)*

Jeh seduced Lam's sister and she gave birth to a male child. Jeh was ordered by the court to pay four head of cattle as legitimization fees (*ruok gaanke*), since he refused to marry the girl. This was in 1944.[2] The child died two years later, and Jeh appealed to the court for return of his cattle. The court ruled that the cattle should not be returned. Jeh had refused to marry the girl though he had cattle with which to do so. The four head of cattle must therefore be considered compensation *ruok* (*ruot*) *nyal*.

[1] See pp. 128–31.

[2] Before the Nuer Chiefs' Council Meeting of 1934, when legitimization fees were standardized (see pp. 134–5).

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

• 684

Summary

From the circumstances and examples described above, it appears that—

(i) The mere act of sexual intercourse with an unmarried girl (*dhu nyal*) is considered a wrong and one which may demand the payment of compensation. This attitude is conditioned, not by any idea that sexual intercourse before marriage is morally reprehensible, but by the fact that a girl who is known to be free with her favours and to have had many lovers is often considered an undesirable wife. Her chances of making a good marriage may be compromised. It will be the girl's family and kinsmen who will suffer in consequence.

(ii) Compensation is called *ruok nyal*, and varies throughout Nuerland from two to three head of cattle. The majority of tribes reckon *ruok nyal* to be two head: a cow-calf and a bull-calf. This is rigid and unalterable in the sense that there can be no increase over that figure for a single offence.

(iii) Nuer distinguish between what they call *dhu nyal dhor*, 'seduction of a girl in the bush', and *dhu nyal cieng*, 'seduction of a girl in the home'. The former offence has a degree of social recognition and is not usually regarded as a serious matter; the latter is considered a more flagrant violation of the rights which a girl's family have in her. This distinction is, however, somewhat academic and is certainly not reflected in the actual number of cattle demanded as compensation.

(iv) *Dhu nyal cieng* is sometimes used to describe an act of elopement. This is a much more serious offence, especially if the girl assumes the appearance of a married woman by wearing a skirt and openly living with the culprit. He has stolen the girl, '*ce nyal kual*', and the offence will be referred to as *kuil nyal*.

(v) These distinctions, though they do not alter the amount of compensation, are relevant to the action which the girl's family will take. Although the culprit is liable to pay compensation, it is unlikely that the girl's kinsmen will pursue the matter unless he persists in his attentions or actually runs away with the girl. If he does persist their attitude will depend on a variety of circumstances. If he is known to have cattle, they will begin by trying to persuade him to legalize the union by payment of bridewealth. If he is undesirable they will warn him to keep away and, if he ignores the warning, may resort to violence by seizing cattle from his kinsmen. His kinsmen may take steps to recover them by aggressive action, they may ask for them to be returned on the understanding that they will pay the recognized compensation, or they may allow them to remain with the girl's family, thereby indicating that they are willing to open negotiations for legal marriage.

(vi) Nowadays, in most parts of Nuerland and largely depending on

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684

the prestige and effectiveness of the local authorities, the girl's family will usually resort to the court. To begin with the man will be publicly admonished by the headman or chief; if he ignores this he will be brought before the court. The court will usually try to bring about a legal union between the pair, but if this is unacceptable to either party or impossible because the culprit has insufficient cattle, it will enforce the payment of *ruok nyal*.

(vii) Penal sanctions now enter into the matter, not only in ensuring that action one way or another will be taken to satisfy the girl's kinsmen, but in the infliction of punishment on the wrongdoer if his act is regarded as a particularly serious wrong. It is noticeable, however, that punishment is usually inflicted only in cases where the wrongdoer has disobeyed the orders of the local authority, usually the headman, or sometimes the orders of the court. The punishment is therefore usually, though not always, applied because the culprit has committed an offence against the authorities, not because his initial offence was punishable in law.

(viii) The birth of a child as a result of illicit intercourse with an unmarried girl in any of the circumstances described above does not alter the law or the amount of compensation payable to compound the offence. But the girl's family are likely to display greater indignation and to force the issue with greater determination. A simple act of sexual intercourse with an unmarried girl is often ignored. If a child is born as a result, whatever the circumstances, the offence will certainly not be ignored.

(ix) This offence is known as *ruat nyal*—impregnation of an unmarried girl. It may be compounded at the same rates as *dhu nyal*. There arise, however, obvious complications over the legitimate parenthood of the child. The culprit may simply pay compensation (*ruok nyal*) and forgo any future claims on his child. The child then belongs to its mother's lineage or, more usually, to the man who subsequently marries her with full bridewealth, especially if she is married fairly soon after the event. The culprit may pay a legitimization fee (*ruok gaanhe*).

(x) If he pays *ruok gaanhe*, he will not be expected to pay also *ruok nyal*; but should the child die, the cattle will not be returned to him. What he has paid as a legitimization fee becomes compensation in retrospect for the act of sexual intercourse with the girl. As we have seen, a man must announce his intention of legitimizing the child at once. He cannot do so at a later date, at any rate without paying much higher rates.

I rather doubt whether the scales of compensation quoted by Nuer as being traditional, though obviously again a formula for compromise, had any exact application in the past. They seem to me to be the product of more recent decisions in the courts and of case law.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

•684

Recent Legislation

Rulings given by the chiefs at the meeting of 1945 were as follows:

(a) When a man seduces an unmarried girl he must pay compensation (*ruak dhe nyal*) of a cow-calf and a bull-calf to her guardian. If he elopes with her or persuades her to leave home he is liable to pay two cow-calves. This applies only in cases where the girl does not bear a child. This is *ruak dhe nyal*.

(b) If the girl bears a child, her seducer is not liable to pay compensation, i.e. *ruak ruut nyal*.

(c) In the circumstances given in (b) above, the seducer has the option of marrying the girl in the normal way or of legitimising the child by payment of four (*ruak gaandu*). If he declares that the child is not his or that he will have nothing to do with it, he can only legitimise it at a later period by payment of from six to ten head of cattle according to the age and sex of the child.

(d) Any man who seduces a girl and, after payment of compensation or legitimisation fees, returns to her again, renders himself liable to imprisonment.[1]

There appears to be considerable variation of opinion on this subject throughout Nuerland, and it is surprising that this agreement took the form it did. Some chiefs said that if a girl bore a child her chances of getting married to someone else were not reduced. The birth of a child proved her fertility, which was an important consideration to a prospective husband. It may also be noted that these rules give legal recognition to the distinction between mere seduction and seduction which amounts to abduction. A man will now pay a cow-calf and a bull-calf for the former offence and two cow-calves for the latter. Though the latter was regarded as a more serious offence in the past, the distinction was not, as we have seen, reflected in the compensation claimed.

3. OTHER WRONGS

Thuoŋ yiika

Thuoŋ yiika has already been mentioned under the heading of homicide. *Thuoŋ* is the normal word used for bloodwealth and *yiik* refers to the married woman's mat, and hence is a symbol of marriage and childbirth. The expression therefore refers to the indemnity which a woman's family may demand if she dies in childbirth. Nuer opinion on the subject is vague, and the law has now been abolished. Prior to its abolition in 1947 it was generally accepted in Nuer courts that—

(i) The indemnity was never claimed from the husband of a legally married woman. It could not be claimed by a woman's husband from an adulterer should his wife die as a result of the latter's wrong.

(ii) It was demanded for unmarried girls who died in childbirth. The definition of 'unmarried' in this context is not entirely clear. The indemnity might be demanded from a man whose betrothed wife died in childbirth before the final bridewealth payments

[1] Extract from Minutes of Nuer Chiefs' Council Meeting, 1945 (unpublished.)

8:Howell-E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

684

lgid been made or before the meat; a woman in such circumstances is *laagh*, still unmarried.[1]

(iii) A man was only liable to pay *thang yiika* in certain circumstances, for example, if the girl died in childbirth before the child was delivered or before she rid herself of the afterbirth.

Up to 1947 there were occasional claims for *thang yiika* through the courts, but this does not necessarily indicate that it was applied either consistently or often in the past. It is worth noting, however, that the special expert known in Nuer as the *kuaar yiika* was concerned with the assessment of compensation in such cases, acted as arbitrator, and performed the necessary ritual. He was concerned generally with the fertility of women, and had a traditional and orthodox position in Nuer society like other experts of that category.

Thang yiika was at one time standardized at six head of cattle. Among the Gaawar, Thiang, and Lak tribes it had previously been set at eight head of cattle (five cows and three bulls), and at six head among the Dok and Jagei of Western Nuer District. I have, however, heard the Eastern Jikany say that it was previously thirty head, and the Bul and Leik sometimes say that it should be twenty. I doubt that such large numbers of cattle were ever paid. *Thang yiika* was abolished at the Nuer Council of 1947, and is therefore no longer law.

Thiang

Sexual intercourse with a woman who is pregnant or is suckling a child is a serious breach of taboo, and will result in harm to the woman or her child. A husband who commits this offence is accused; *his kinship, as well as that of his wife, will insist on the performance* of ritual expiation and sacrifice. If the man who does so is not the legal husband of the woman and his act results in her death, he will be held liable and will have to compensate her husband, though the rate of compensation is not fixed. I have no records of a case of this sort, though I have heard of instances where a man has been prevailed upon to pay. Disputes do not usually arise, for, apart from the fact that the offence is rarely committed, ritual sanctions are usually sufficient to secure payment. The wrongdoer will fear the consequences to himself, although it is considered that the woman runs a graver risk. I recall one case among the Rut Dinka who have the same custom.[2] A man called Thon de Kur had intercourse with a woman who was suckling a child. The child died subsequently, a dispute arose, and he was made to pay a cow as compensation (Dinka: *guk de thiang*).

[1] See earlier 'Legality of Marriage', pp. 124-6. *Nuer simply say equal we have known of one for thang yiika cal, 'if a girl who is not married dies (in childbirth) thang yiika will be called'.*

[2] The idea is common to all Nilotes, including the Shilluk, and is everywhere known by the same name.

Nuer.

8;Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

a sin. No action against the offender is taken, but the spiritual dangers involved are correspondingly greater and more difficult to avoid. Fratricide and patricide and, to a lesser degree the killing of a close agnatic kinsman, is an offence against the objectives of kinship association and therefore a sin against the religious standards which express those objectives. Expiation in the form of prayer and sacrifice is essential; vengeance or restitution is not possible.

These observations apply specifically to homicide. There is no apparent belief that spiritual pollution will result from the infliction of bodily injuries less than death, nor from private delicts such as theft or the destruction of the property of persons who have no kinship or marital relationship with the offender. On the other hand, offences against accepted rules of marriage relationships and behaviour towards women within the lineage have a supernatural sanction, but again it will be seen that this is only a reflection of the idea of kinship. In such cases, however, there is no need for indemnification paid in cattle,[1] which is limited to the relations of opposed groups and the maintenance of the balance between them. In the first place a breach of the rules of exogamy is an offence against the structure of the kinship group, and one which involves the couple and their kinsmen in the gravest danger. Here there is no question of the maintenance of social equilibrium between two groups, only the spiritual safety of the single kinship group within itself and of the individuals of which it is composed, and there is consequently no question of material indemnification. The incestuous couple are themselves liable to the supernatural consequences which may be physically manifested in some form of disease (*muor*), and their kinsmen may suffer subsequently, particularly from sterility, *infant mortality*, or a series of disasters which may also apply to their cattle. It is an act which requires expiation in the form of ritual and sacrifice, and the seriousness of the breach is gauged according to the nearness of the relationship of the couple. This dictates the value of the sacrifice and the complexity of the ritual of expiation. In some African tribes incest is treated as a crime, particularly if the offence is repeated, and penal action is taken against the culprits; but among the Nuer the ritual processes required are presumably considered sufficiently efficacious, and no repressive action is taken against the offenders. Theoretically those who consciously repeated the offence would earn the reprobation of their kinsmen, resulting in a loss of privilege which might reach the stage of expulsion, but I can quote no instance of this and have never found a Nuer who could.

There are other breaches of observance which result in similar forms of pollution. It is, for example, an offence to have sexual intercourse

[1] For minor infractions gifts—animals, food, &c.—may be offered to an offended kinsman.

Nuer.

b:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

783
684

with a woman who is pregnant or a nursing mother. If the man who so offends is the woman's own husband, her relatives are likely to express great indignation and, if he is to continue on good terms with them, he will have to take steps to neutralize the consequences by ritual purification and sacrifice; otherwise the woman or her child will die. Moreover the ill-effects may extend to her kin, and in some cases these will demand a cow from the offender, not, I think, as direct compensation for a wrong but as a gift which will probably be dedicated to their ancestral and household spirits who otherwise may bring trouble to them.[1]

If the act is committed by a man who is not the woman's husband, it is certainly considered serious, but it is treated as a normal case of adultery and the compensation (*ruak*) demanded by her husband will not be greater than in normal adultery, although his indignation will be more intense and the likelihood of his taking violent action against the offender greater. For this reason alone such cases are likely to be settled by indemnification more promptly, and in this sense the religious concept is also a sanction for payment; the compensation is conditioned not by the likelihood of the spiritual effects, but by the traditional assessment of the wrong to the husband. Thus in this case religious belief is a sanction for the operation of a recognised process of law but has no effect on the amount of compensation. The idea of pollution is also present in cases of straightforward adultery where, as we have seen, among most Nuer tribes one cow should be paid in order to counteract the pollution involved, the cow called *yang kuir* ('the cow of the sleeping mat'), which will allow the husband to resume relations with his wife in safety, and which is something quite different and apart from other cattle paid as compensation for what is regarded as a secular wrong. It is worth noting that if the adulterer is closely related to the cuckold no compensation will be demanded, but the *yang kuir* is always paid.

There are also many customs which are not normally the cause of litigation in the courts, nor indeed of much dispute of any kind, but for which a form of compensation is necessary. For example, it causes offence for a man to appear naked before his mother-in-law or any woman who stands in that relationship to him. This applies even if he does so unwittingly, especially in the early stages of marriage. It is an offence which will require some small gift as compensation, and the offender may also be expected to make a token offering, a pinch of tobacco or something of the sort, to the ancestral spirits of his wife's lineage. Observances of this kind and the action taken if they are ignored are upheld by ritual sanctions, as well as by sanctions derived from the purely social relations arising in marriage and kinship.

[1] Thieng, see p. 179.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

as a sorcerer or witch in normal circumstances. Similarly, other categories of magicians and spirit-owners are generally expected to act in the interests of their clients, although in some cases the client may, by paying a fee, gain the assistance of one of them to work witchcraft against his private enemy. Some spirit-owners have an unsavoury reputation in Nuerland. There are, however, persons whose activities are considered entirely anti-social, and who thus fall into the category of witches, whatever the circumstances.

Witchcraft

Apart from *gwan mal* or owners of medicines who have acquired an evil reputation, witches are possessors of the evil eye, called *yath* in Nuer, who are believed to cause harm and even death to those who cross their path in anger, and sometimes without any motive at all other than the inherent evil of their personalities. The *rulk* or ghoul is also a kind of witch who is particularly associated with the performance of hideous rites upon the bodies of the newly dead, thereby gaining some control over the souls of their surviving relatives.[1]

In the common action of the community against witchcraft we find perhaps the only conception among the Nuer which even approaches the notion of criminal or public law. Nuer say that in the past witches of these kinds were often killed with at least the tacit consent of the whole community to which they belonged. There are, however, no authenticated cases on record. The *rulk* might be killed with impunity, provided that blood was not spilt and no injuries to his head were inflicted by his assailants. The *yath* might be killed without grave danger of retaliation and, if compensation was demanded, only six head of cattle need be paid to the kinsmen. It is doubtful if anything was paid in such circumstances. Accusations of the evil eye are fairly common today, but I have no details of the possessors being killed in the past.

It is worth adding that among many primitive peoples unnatural offences and bestiality are treated as public delicts and punished by ostracism, exile, or even death. Such offences are conspicuous by their absence among the Nuer. During several years in Nuerland I only heard of one actual instance. This occurred in Gaawar country, where a headman of considerable standing admitted such an offence with a cow. This was regarded as a grave misfortune, though the reaction was one of pity for the culprit rather than indignation. It was held that both he and the cow would die. As an act of expiation he cut off one of his own fingers with a spear and, accompanied by sacrifice, this was considered an effective antidote. In the absence

[1] See Howell and E. A. Lewis, 'Nuer Ghouls, a Form of Witchcraft', *S.N.R.*, 1947.

8;Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

of further evidence it is not possible to expand on this subject. Nuer simply say that a man who commits such an offence will surely die. The ritual sanctions must be very effective.

Actions against Witches Today

In all cases of accusations of witchcraft appearing before modern Nuer courts of which I have any record, the accused was submitted to searching examination and evidence of a sort was taken. The facts seemed hard to prove, but by reference to the character of the accused (anything in the nature of incessant ill-temper, shrewishness, and general unpopularity backed by *definite* instances of misfortune among the accusers), the members of the court usually came to a decision. The matter was not treated lightly, and it is a fact that the large majority of such cases were dismissed as frivolous, and in some instances the plaintiff was punished for false accusation (*lerjok*)[1]. Sentences of imprisonment were sometimes inflicted, in most instances on women who were suffering ill-treatment from their neighbours and would be better out of the way for a while. Imprisonment, an idea entirely alien to the Nuer, somehow acted as a form of expiation or purification, and I have noted that in nearly all cases the woman went back to live unmolested among her neighbours.

Oaths

In connexion with Nuer religious beliefs which have bearing on the study of law and the procedure of courts today, oaths must be considered. The ceremony is usually performed by the Leopard-Skin Chief, who is called in for this purpose. There are two common forms of oath, the first called *kuang, kuil, or kap tang* ('to hold the spear-shaft'), which is used in a variety of circumstances, while *math* (literally, 'to drink') is the form often employed in cases of unconfessed homicide. The taking of an oath is not an individual process carried out by one man alone. In the former ceremony both accuser and accused are expected to take part, and it amounts to something of an ordeal between them; in the latter, where there is no known accused, those suspected and all their kinsmen are expected to participate.

It should be noted that the use of such oaths, especially in court, is not encouraged by the Government. Moreover, although the participants are often willing enough, the onlookers are afraid for them and nearly always persuade them to take some other course. Nuer chiefs and court members frown on the practice for this reason and not only because they know that the procedure is not in keeping with Government policy.

[1] See p. [illegible].

B:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

may be described as public law. There is no evidence of a penal sanction applied by anything which resembles 'politically organized society', nor anything which indicates that such procedure is enforced by the will of the community; the community, that is, which extends beyond those segments which are actually at feud. Nor again can the Leopard-Skin Chief, the functionary through whom the ritual and compensatory processes may be successfully carried out, be described as a 'constituted representative of political authority', for there is nothing behind him to enforce a decision other than a vague and not very effective sanction in his power to curse. It is only when both parties are willing to negotiate that his particular functions are effective.

A further point of significance is the fact that the Nuer distinguish between intentional and accidental killing. It might well be argued that, since they make this distinction, there is at least an element of the idea of punitive damages contained in the scales of compensation according to the circumstances of homicide. I do not think this is so for two reasons. In the first place the Nuer often say that there really should not be any distinction at all. In the second place it seems that the variations spring from an original principle of compromise. The indignation of the *ji ran*, the dead man's kindred, is undoubtedly affected by the motives of the killer, and is likely to be less intense if there is no motive at all. In the past a compromise at a lower figure was therefore more probable. Since then there have been many homicide disputes from which precedents have arisen, and many of these were due to the direct influence of administrators at the time. Precedents of this sort have now become standardized by usage and, recently, by formal recognition at the Nuer Chiefs' Council; there is now a complicated body of law concerning homicide which are consistently applied.

In the past, then, the outcome of blood-feuds depended on the social relations of the groups involved, even though the division over those events might follow the lines of segmentation until a whole tribe was split. There was no all-inclusive community within which an act of homicide could become a public delict, nor any political association outside the parties concerned sufficiently institutionalized to enforce a decision. There was only a traditional procedure by which the affair could be settled if both parties were willing.

Similarly other legal wrongs required the payment of an indemnity to the injured party and, since the individual does not stand alone or acquire rights except as a member of an integrated kinship group, we may say that this action, though less collective in extent than the composition of homicide, was directed to the re-establishment of the balance between the groups concerned. If the maintenance of the balance was not necessary, either because the two individuals were closely related and the disturbance was in consequence less acute, or

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

681 621 because the groups concerned were too remotely connected, the likelihood of composition was small. In the first instance the indemnity was not paid, or was paid on a much reduced scale; in the second instance it was not paid at all. Again, analysis of the concepts which concern sexual congress of persons between whom such relations are forbidden shows that such offences are not treated as public delicts. [684] Adultery requires the payment of an indemnity in cattle, and we have noted that some of these cattle are regarded as direct compensation for an infringement of marital rights in the wife, while one in particular is an expiatory payment necessary to remove the pollution which results and to rectify any impairment of the husband's ritual status. There is no evidence of public law here. Even a breach of the laws of exogamy, which, among some African tribes, is followed by a reaction of moral indignation and organized action against the culprits, is not a public delict among the Nuer. Certainly no punitive action is taken against the guilty parties even though all their kindred are subjected to considerable spiritual danger. The sanction here is supernatural, and although the pollution caused by such an act may extend beyond the principals to persons who are related to them, penal sanctions are not applied. Moreover such offences are relative in gravity according to the proximity of relationship between the principals. Even in the most serious breach the contamination (*nueer*) may be removed by the performance of the prescribed ritual, which is considered effective and in which the Nuer have considerable confidence.

[685] We have also considered theft. Here, in the case of material possessions of a certain type, all of which had an exchange value in cattle, the Nuer tell us that damages could be claimed which appear much in excess of the current value. This certainly suggests a concept of punitive damages; but further analysis shows that compensation was directed again to the restoration of equilibrium. The disturbance had been considerable, not only because articles of this nature had a high intrinsic value owing to their scarcity and the difficulty in obtaining them, but also because their loss might cause severe economic hardship to the individual and to his family group, and perhaps to a wider circle of associates in the subsistence economy. It is doubtful, in the absence of any institutionalised body to enforce payment, whether compensation was ever paid on the high scales which the Nuer tell us are traditional but, whatever the circumstances, it is clear that theft was not considered a public delict.

681 621 683 The only form of procedure which might fall within the category of public law was the repressive action taken against witches and ghouls. Although the Nuer themselves say that this action was sometimes taken and, in quoting instances in their history, refer to individuals who have at least an established position in known genealogies,

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

rights of others, may be punished by fine or imprisonment. Moreover certain legal wrongs, which in the past were never more than private delicts and were composed by the payment of compensation aimed at the restoration of this balance, are now becoming criminal offences in a more exact definition.

Under the influence of the Administration over the last twenty years or more the Nuer, as represented by their local authorities, are rapidly becoming conscious of the value of punishment as a deterrent. Court members will sometimes say that they are punishing a man both because his action has been detrimental to society as a whole and has created a disturbance, and also because such disruptive actions must be checked. Public opinion as a whole is not advancing very rapidly in this respect, and it is significant that there is still no social stigma attached to imprisonment. The average Nuer does not understand why imprisonment should be inflicted at all, especially if compensation is also paid to the injured party. This is apparent, but it is perhaps worth while to consider this attitude in connexion with certain offences. We have already noted that the Nuer cannot understand why a man should be punished for killing his wife.[1] The damage done has been done to himself, and though he must make peace with his ancestral spirits, for he has sinned against the whole concept of kinship and the continuity of the lineage, and must pacify his wife's relatives with gifts and acts of atonement, nothing more should be demanded of him. His act, like suicide and fratricide, is the negation of the basic principles which underlie kinship. He has used the cattle of his lineage to marry a wife, he has killed her, lost the cattle, and compromised his position in posterity. His act is reprehensible enough for these reasons, but why should he also receive punishment at the hands of the Government? Similarly, an act of adultery requires an indemnity to be paid to the man whose rights have been infringed. Once paid, what need is there for fine or imprisonment? This is a general attitude, even though punishment is so frequently applied that the Nuer have come to expect it and even demand its application to those who have transgressed against them.

When we come to analyse the position more closely, however, we find that there are few offences which can yet be classified as criminal. Homicide and bodily injury are the main exceptions to this observation. Murder is often punished by death and other forms of homicide are now settled by the payment of fifty head of cattle.[2] Forty of these go to the kinsmen of the deceased in the traditional manner, but ten go to the Government and must be called a fine. In addition, unless there are exceptional circumstances which mitigate the offence, the killer is sentenced by the court to imprisonment for a period varying from one to six years. Though in the early stages of administration

[1] See p. 62. [2] See pp. 63 et seq.

8:Howell E, G-S (1942-1944)1954
FJ22 Nuer FJ22

692 this was usually inflicted by the District Commissioner sitting as a
681 magistrate, or by the court on the advice of the District Commissioner, this form of sentence is now imposed almost automatically. Yet although there are clearly some Nuer chiefs who realize the value of imprisonment as a deterrent, the majority would not impose such a sentence without pressure from the administration. Moreover such punishments are often inflicted without due consideration of the circumstances of the case, and it is symptomatic of the general attitude to punishment that court members have a habit of asking for fixed sentences to be laid down for specific offences. It is, indeed, one of the problems of the Administration to explain to the Nuer that, though there may be a maximum penalty for an offence, this need not necessarily be applied. The reason is that, although Nuer chiefs and court members may be aware of the value of punishment, they are still reluctant to inflict it, especially as they are often subjected to recrimination by their fellows after the case is over. A fixed penalty absolves them from this and throws the responsibility on the Government. Nevertheless homicide and hurt must now be classed as criminal offences among the Nuer because they are habitually treated as such, albeit under protest. This observation may be applied also to theft.

[681] In other offences in which punishment is sometimes but not always applied, we find that it is not usually the offence itself which is treated as a criminal action but the offender's action in disobeying the orders of the local authorities or the court. The punishment is inflicted for the defiance of authority by the offender rather than for the offence he had originally committed.

681 It is also clear that the introduction of penal sanctions has sometimes led to a curious mixture of legal concepts. For example, adultery
•684 is, as we have already seen, an offence which is normally compounded by payment of compensation to the wronged husband. Even though offenders are sometimes punished for persistent attention to the wives of others or for flagrant defiance of the orders of their chiefs, adultery remains essentially a private delict. For the reasons already described,[1] if a divorce follows an act of adultery, it is a fundamental principle among the Nuer that the compensation cattle must be returned to the adulterer and should not be retained by the woman's husband, who would otherwise pass them to her family. To do so is to risk a confusion of legal status which Nuer law seeks to avoid. Owing to a recent decision by the Council of Nuer Chiefs, these cattle must now be paid to the Government and thus become a fine. Adultery, initially a private delict, becomes a public delict, and a criminal offence should
671 the husband decide to dissolve the union subsequently. There is
177 therefore growing up a curious admixture of traditional Nuer law, which in basis and principle is essentially private law, and European

[1] See pp. 166-8.

11:Evans-Pritchard E-S (1931, 1936) 1945
FJ22 Nuer FJ22

give sex. If they have begotten children by the wives of other men they are rather proud of this evidence of their virility. 137

The legal position about adultery is as follows: If a man finds another committing adultery with his wife they will probably fight, though the adulterer will escape if he can because he does not wish to add homicide to adultery. But often enough either the husband does not know that adultery has been committed or cannot catch the adulterer in the act. If the husband is unfertile or impotent he may pretend that he is unaware of his wife's infidelity because, while he desires children, he does not wish people to think that he is condoning adultery. However, a young man is not likely to take this line. A Nuer said: "An impotent man (*ker*) who is young does not think of children but of his rights. When he is old he thinks of children and is willing that his wife should give birth in the bush (*by a stranger*)". Sometimes a man knows that a neighbour is committing adultery with his wife but is afraid that if he fight him he will be injured. If a man is ignorant of his wife's infidelity and she bears him no ill-will she may tell him about it because it is considered dangerous for a husband to sleep with his wife on the skin where she has committed adultery. 137 137 684

When a husband has proof of his wife's infidelity he may claim compensation of six cows and, as the adulterer's kin are unlikely to support him on a charge of this kind, the husband will probably receive the cattle. But if later a healthy child of the adulterous congress is born five of these cows must be returned, because "The cattle and the child must not meet in one place". The cattle paid in compensation are thought to give the genitor a claim on the child for they then partake of the nature of a legitimation fee. The payment by the adulterer would be changed by the birth of a child from compensation (*ruak*) for adultery to a fee (*ruak*) for the child. I was unaware of this fact when I lived among the Eastern Nuer and it may be restricted to the Western Nuer. I am uncertain whether even among the Western Nuer the cattle are invariably returned but it is believed that if they are not returned the child may die and his ghost haunt his pater.

The cow that remains in the husband's kraal is called *yang kulo*. The payment renders innocuous the action of the husband in having relations with his wife on the same skin on which she had relations in adultery. In most of the cases of adultery mentioned in this paper either the cattle were returned on the birth of a child or they were never paid, for often when the husband is old he does not claim compensation.

Among the Western Nuer when it is well known that a girl is a bastard begotten of a certain man, the genitor will sometimes claim "the cow of begetting" on her marriage. Her kin do not relish handing him over a cow but they often do so because there is a mystical link between father and daughter and if he does not receive a cow of her bride-wealth he may curse her so that she may not bear children or so that her children will die and haunt their pater. The husband's people are therefore anxious that a cow shall be paid that their wife may be fruitful. 515 243 431

The verb *ruak* is used to describe the paying of compensation. Thus one says *Ca ghok Gokuok ruk ke dhom ceh Yang*, "The cattle of Gokuok 684

11:Evans-Pritchard E-5 (1931, 1936) 1945
FJ22 Nuer FJ22

684 have been paid in compensation for adultery with the wife of Yang". The same verb is used for paying compensation for intercourse with an unmarried girl e.g. one says *Bi yang ruak*, "You will pay a cow" for this action. *Ruak* also means to legitimatise a child born of an unmarried concubine. The genitor says *Ca gatde ruk*, "I have legitimatised my child by payment of a fine".

833 834 To describe sexual relations outside the union of marriage Nuer use the verb *kum*. The use of this word in a polite way of referring to sexual intercourse and could also be used to describe marital relations if one were to refer to intercourse between husband and wife. But it would be very unusual to refer to it. The word *kum* is used to describe the social relationship of a man to an unmarried concubine or widow-concubine, though it is a slightly coarse expression when used in this connection, and in the presence of related persons one would preferably say of a man and a widow *Muthke pi kel*, "They drink water together". *Lo-t* is also used to describe the courtship of a girl by a youth and refers to mere flirting or sexual intercourse alike. In fact it covers all relations between the sexes from casual intercourse to permanent cohabitation, though it has generally the sense of extramarital relations.

835 582 The rules of exogamy which obtain for simple legal marriage apply also to all the different unions described in this paper. A man may not cohabit with a woman whom he may not marry.

VI

586 931 423 592 587 The test of the nature of a procreative union is in the division of the bride-cattle of daughters born of it. When the pater is alive he receives the "cattle of the father" and "the cattle of the mother". If he is dead they belong to his sons (the bride's half and full brothers). The genitor in ghost-marriage and levirate marriage has no legal claim to the "cattle of the father" or the "cattle of the mother". They belong, at any rate in theory, to the bride's brothers. The genitor in ghost-marriage stands in the place of the pater with regard to the bride's brothers as well as to the bride herself so that there is no need to define ownership of the bride cattle very clearly, for in any case they join his herd. When the genitor has begotten the bride in levirate concubinage, division of the cattle may be more complicated because the bride may have full or half kind to begotten by her dead pater, or by other men after his death. I discuss these matters in a preliminary manner here because they will be elaborated later.

The genitor in ghost-marriage and in levirate marriage may always demand a cow for his services for having begotten the bride. Similarly a man who lives with a widow-concubine may demand a cow on the marriage of her daughter on the grounds that he has begotten her and, if he acted as her foster-father, he may claim another two or three head of cattle for having acted as bread-winner to the family during her infancy and adolescence. He says "I cut meat for them" in reference to the fact the children have been nurtured by his labour as herdsman, gardener, and hunter.

11:Evans-Pritchard E-5 (1931, 1936) 1945
FJ22 Nuer FJ22

brother, Gwanhol ♂—Jany ♂, who was killed in war. She has borne Lot ♂ a son, Col ♂. Jur ♂—Jany ♂ shares this byre.

Homestead No. XV. Nyading ♀—Thiep ♂. She died last year but as her hut is still standing she is included in this list. She was a wife of Jany married to him after his death by his son Gwanhol ♂ to whom she bore a son, Jur ♂, and three daughters. On the death of Gwanhol she cohabited with Mokwac of Homestead No. XVI but has not borne him children.

Homestead No. XVI. Mokwac ♂—Nun ♂. He shares this hut with Yuai ♀, widow of Diou ♂—Nhial ♂, an aristocrat of the Diewy section. She had three children by Diou, two being dead and one, Nyarwah ♀ being alive. By Mokwac she had a son, Thor ♂, who died, a daughter, Nyaluezni ♀, and a newly born daughter. Mokwac also cohabits with Nyadeng ♀, of Homestead No. XXI. She has not borne him children but "cooks for him". Before her death Mokwac used to cohabit with Nyading of Homestead No. IV. He has no wife of his own.

Homestead No. XVII. Nyathagh ♀—Lagh ♂. A Dinka captive who was married to Deng ♂—Col ♂, a Jikol man. She bore him a daughter who died, and a son, Puai ♂. When her husband died he had no brother to cohabit with her and, being a Dinka captive, she had no kinsmen with whom she could reside, so she became concubine to Col ♂—Thiep ♂, a leopard skin chief of the Kwanyang section. She bore him Nyathat ♀, Nyading ♀, Nyangirk ♀, Kur ♂, and Nyadwot ♀ (dead). On Col's death she remained in his homestead, her present abode, and took a lover, Rick ♂—Jur ♂, of the Reng section of the Jikany tribe. She bore him no children and relations between them ceased. At present she has no lover.

Homestead No. XVIII. Nyadut ♀—Tweth ♂ (sister to Nhial ♂ of Homestead No. XXIII). She is a widow of Cue ♂—Thol ♂ of the Riangh clan. There were no children of this marriage and on her husband's death she lived in leviritic concubinage with Deuh ♂—Cue ♂, one of her husband's sons to whom she bore Leau ♂, Nyayour ♀, Wany ♂, and another son. Deuh ♂ was killed by Mokwac of Homestead No. XVI (compensation was paid but although Mokwac ♂ and Leau ♂—Deuh ♂ live side by side they do not eat or drink together). For a while Nyadut ♀ then cohabited with Marial ♂—Kwong ♂ of the Gai section of the Jikany tribe. She bore him a child which died. Its death convinced them that they ought not to have had relations because Nyadut was *cot grandchild*, "granddaughter's wife", to Marial. She now cohabits with Bawayai ♂ of Homestead No. III. She has borne him a daughter. Nyadut's byre has fallen down. People say that it will be rebuilt next year.

Homestead No. XIX. Yang ♂—Tien ♂ (brother of Juan of Homestead No. VII, when I asked why the brothers do not live together I was told *Juan eats me in her dwelling, as Yang in her dwelling.*" Juan has a site which suits him down here, and Yang has a site which suits him up there".) Yang married Nyabuol ♀—Dac ♂ but she died, with her baby, in childbirth as a consequence of incest. She had incestuous relations both with a kinsman of her husband and with a kinsman of her own. (As she brought death on herself Yang ♂ did not have to compensate her kinsmen for her